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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 474

ANGELO HERNDON, APPELLANT,

vs.

J. I. LOWRY, SHERIFF OF FULTON COUNTY, GEORGIA

No. 475

ANGELO HERNDON, APPELLANT,

vs.

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APPEALS FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED OCTOBER 20, 1936.

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[fol. 1]

IN SUPERIOR COURT OF FULTON COUNTY

PETITION FOR WRIT OF HABEAS CORPUS—Filed October 28, 1935

To the Superior Court of Said County:

The petition of Angelo Herndon respectfully shows the following facts:

1. The petitioner is a citizen and resident of the State of New York, and is of the Negro race.

2. The defendant, J. I. Lowry, is a resident of Fulton County, Georgia, and is sheriff and ex-officio jailer of said county.

3. Petitioner is illegally and unlawfully detained and held in custody in Fulton County, Georgia, by the said J. I. Lowry as said sheriff and ex-officio jailer.

4. The sole claim of authority under which the said J. I. Lowry restrains your petitioner of his liberty, is a purported judgment, order and sentence of the Superior Court of Fulton County, Georgia, signed by Honorable L. B. Wyatt, Judge of the Superior Court, C. C., sitting in and for said county, on the 18th day of January, 1933, a copy of which is marked "Exhibit A," attached hereto and made a part hereof. The said judgment, order and sentence provides that petitioner be imprisoned in the Fulton County jail until a sufficient guard is sent for him from the Georgia Penitentiary, and that he be then delivered to said guard to be taken to the Georgia Penitentiary, or to such other place as the Governor may direct, and there be confined, at hard labor, for not less than eighteen years and not more than twenty years.

5. Such judgment, order and sentence were based upon petitioner's indictment (a copy of which is marked "Exhibit B," attached hereto and made a part hereof) and conviction of "attempting to incite insurrection" in violation of Section 56 of the Georgia Penal Code; said conviction being based upon evidence, a full statement of which is contained on pages 56 to 126, both inclusive, of the record

on petitioner's appeal in the Supreme Court of the United States, a copy of which is marked "Exhibit C," attached hereto, and made a part hereof.

[fol. 2] 6. There is nothing in the evidence upon which petitioner's conviction is based to show that there was a clear and present danger that violence or other unlawful acts would result from petitioner's action, or that petitioner advocated violence or other unlawful acts, or that violence or other unlawful acts would probably result from any of petitioner's action-, or that whatever violence or other unlawful acts might result from any of petitioner's actions would be likely to occur in the immediate or foreseeable future or at any given time.

7. Section 56 of the Georgia Penal Code purports to make criminal "any attempt to persuade or otherwise to induce others to join in any combined resistance to the lawful authority of the State." The crime denounced in this statute was defined by the Supreme Court of Georgia in its original opinion in petitioner's case as follows:

"Force must have been contemplated, but, as said above, the statute does not include either its occurrence or its imminence as an ingredient of the particular offense charged. Nor, would it be necessary to guilt, that the alleged offender should have intended that an insurrection should follow instantly or at any given time, but it would be sufficient that he intended it to happen at any time, as a result of his influence, by those whom he sought to incite * * *."

The statute was reexamined upon the petition for rehearing, and the crime was further defined as follows:

"Force must have been contemplated, but the statute does not include either its occurrence or its imminence as an ingredient of the particular offense charged. Nor would it be necessary to guilt that the alleged offender should have intended that an insurrection should follow instantly or at any given time, but as to this element it would be sufficient if he intended that it should happen at any time within which he might reasonably expect his influence to continue to be directly operative in causing such action by those whom he sought to induce."

The said statute on its face and as construed by the Supreme Court of Georgia does not require as a basis of guilt that violence or other unlawful acts be advocated; or that they should be the probable result of petitioner's [fol. 3] actions; or that any clear and present danger exists that violence or other unlawful acts may result therefrom; or that there be any dangerous tendency that violence or other unlawful acts would result therefrom; or that there be any intention that violence or other unlawful acts should result therefrom, either in the immediate or foreseeable future, or at any other specified time.

8. Petitioner's indictment, conviction and the judgment, order and sentence, aforesaid, are unconstitutional, illegal, void and of no effect, because they are predicated upon Section 56 of the Georgia Penal Code, which is unconstitutional and void in the respects and for the reasons set out below, and petitioner's detention under color of the aforesaid judgment, order and sentence is therefore illegal and unconstitutional:

(I) Section 56 of the Georgia Penal Code is unconstitutional, illegal and void by reason of the fact that it is in conflict with the Fourteenth Amendment of the Constitution of the United States in the following particulars:

(a) It denies and unduly restricts freedom of speech and of assembly.

(b) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

(II) Section 56 of the Georgia Penal Code, as construed and applied to the petitioner by the Supreme Court of *Court of* Georgia, is unconstitutional, illegal and void by reason of the fact that as thus construed and applied it is in conflict with the Fourteenth Amendment to the Constitution of the United States in the following particulars:

(a) It denies and unduly restricts petitioner's freedom of speech and of assembly.

(b) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

(III) Section 56 of the Georgia Penal Code, on its face, and as construed and applied to petitioner by the Supreme

Court of Georgia, is in conflict with Article One, Section One, Paragraph Three, of the Constitution of the State of Georgia, which provides that "No person shall be deprived [fol. 4] of life, liberty or property, except by due process of law," in the following particulars:

(a) It denies and unduly restricts the right of petitioner and others to freedom of speech and assembly.

(b) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

(IV) Section 56 of the Georgia Penal Code, on its face, and as construed and applied to petitioner by the Supreme Court of Georgia, is in conflict with Article One, Section One, Paragraph Fifteen of the Constitution of the State of Georgia, which provides that:

"No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that liberty."

(V) Section 56 of the Georgia Penal Code, on its face, and as construed and applied to petitioner by the Supreme Court of Georgia, is in conflict with Article One, Section One, Paragraph Twenty-four of the Constitution of the State of Georgia, which provides that:

"The people have the right to assemble peaceably for their common good and to apply to those vested with the powers of government for redress *of grievances by peti*tion or remonstrance."

9. Although the judgment and sentence, under color of which your petitioner is detailed as aforesaid, were affirmed by the Supreme Court of the State of Georgia on May 24, 1934, and a petition for a rehearing was denied by that Court on September 28, 1934, and an appeal to the Supreme Court of the United States was dismissed by that Court for want of jurisdiction, on May 20, 1935, and a petition for rehearing was denied by that Court on October 14, 1935, there has been no adjudication in petitioner's case by any court of the constitutionality under the Constitution of the United States, or of the State of Georgia, of Section 56 of the Georgia Penal Code.

Wherefore, petitioner avers that his restraint is unlawful, and prays this Honorable Court to issue a writ of [fol. 5] habeas corpus directed to J. I. Lowry, and whosoever may hold your petitioner in custody, commanding him to bring petitioner before this court at the time and place to be specified in the writ, for the purpose of examining into the cause and legality of petitioner's detention, and that thereupon your petitioner shall be granted a discharge from custody.

Sutherland, Tuttle & Brennan, Attorneys for Petitioner.

Duly sworn to by Angelo Herndon. Jurat omitted in printing.

[fol. 6] GEORGIA,
Fulton County:

To J. I. Lowry, Sheriff and Ex-Officio Jailer of Fulton County, Georgia:

You are hereby commanded to produce the body of Angelo Herndon, alleged to be illegally detained by you, together with the cause of the detention, before me on the 12th day of Nov. at 1 P. M. o'clock, then and there to be disposed of as the law directs. Let prisoner be held in custody of respondent in the common jail until further order.

Given under my hand and seal this the 28th day of October, 1935.

Hugh M. Dorsey, Judge, Fulton Superior Court.

Service of the foregoing petition and order acknowledged. October 28, 1935.

John A. Boykin, Solicitor General. James I. Lowry, Sheriff.

[fol. 7] EXHIBIT "A" TO PETITION

In Superior Court of Fulton County

No. 37812

THE STATE

vs.

ANGELO HERNDON

Verdict of Guilty and Recommend Mercy

Judgment

Whereupon, it is ordered and adjudged by the Court that the defendant, Angelo Herndon be taken from the Bar of this Court to the jail of Fulton County, and be there safely kept until a sufficient guard is sent for him from the Georgia Penitentiary, and be then delivered to, and be by said guard taken to said Penitentiary, or to such other place as the Governor may direct, where he, and the said Angelo Herndon be confined at hard labor for the full term of not less than Eighteen (18) years, and not more than Twenty (20) years, to be computed as provided in the Act approved August 27, 1931.

By the Court Jan. 18, 1933.

L. B. Wyatt, Judge S. C. C. C., Presiding. John A. Boykin, Solicitor General.

[fol. 8] EXHIBIT "B" TO PETITION

IN SUPERIOR COURT OF FULTON COUNTY

Indictment

The grand jurors selected, chosen and sworn for the County of Fulton, to wit:

Fulton Superior Court, Criminal Division,

Grand Jurors for July Term, 1932.

1. Fred McSwain, Foreman

2. Frank C. Owens,
3. Homer C. Hall,
4. P. A. Clark,
5. O. D. Witherspoon,
6. J. C. Slade, Jr.,
7. F. R. Coleman,
8. M. T. McCullough,
9. J. E. Varela
10 L. J. Smith
11. L. F. Green,
12. R. S. Paden,
13. J. E. Bennett,
14. C. L. Corlee,
15. R. S. Rust, Jr.,
16. J. W. Wray,
17. G. H. Turnipseed,
18. H. M. Peck,
19. A. Levy,
20. A. J. Collier,
21. C. B. Anderson,
22. H. H. Steed,
23. J. C. Bryant,

in the name and behalf of the citizens of Georgia, charge and accuse Angelo Herndon with the offense of Attempting to Incite Insurrection, for that said accused, in the County of Fulton and State of Georgia on the 16th day of July, 1932, with force and arms, did make an attempt to incite insurrection and did make an attempt to induce others to join in combined resistance to the lawful authority of the State of Georgia with intent to the denial of the lawful authority of the State of Georgia and with intent to defeat and overthrow the lawful authority of the State of Georgia by open force and by violent means and by unlawful acts, said attempt to incite insurrection intended to be manifested by accused by unlawful acts and intended by accused to be accomplished by acts of violence, said attempt to incite [fol. 9] insurrection being made by accused in the following manner to wit:

(1) Accused did call and did attend public assemblies and mass meetings in the homes of various persons whose names and addresses are to the Grand Jurors unknown and did make speeches to various persons to the Grand Jurors unknown, the purpose of said meetings and the purpose of said speeches being to organize, to establish and to set up a group and combination of persons white and colored, under the name and style of The Communist Party of America for the purpose of uniting, combining and conspiring to incite riots, to embarrass and impede the orderly processes of the courts and for the purpose of offering and making combined opposition and resistance to the lawful authority of the State of Georgia and for the purpose of overthrowing and defeating by force and violence the lawfully constituted

authority of the State of Georgia, all of which said meetings were held in various places and on various occasions which are to the Grand Jurors unknown.

(2) Accused did by speech and by persuasion, solicit and did attempt to persuade and solicit certain persons whose names are to the Grand Jurors unknown to combine with, to join and to confederate with and to become members of the Communist Party and The Young Communist League and to become members, agents, and parties to and of The Comumnist Party of America, to the intent and purpose of creating, offering, establishing and waging war against the lawfully constituted authority of the State of Georgia for the purpose of overthrowing the lawfully constituted authority of the State of Georgia by acts of violence and by revolution and establishing in the place of said lawfully constituted authority of the State of Georgia a new government known as United Soviets Soviet Russia, sometimes called and known as "The Dictatorship of the Propertyless People."

(3) Accused did introduce and did circulate and did cause to be introduced and circulated and did aid and assist in introducing and circulating certain booklets, papers and other writings with the intent and purpose of inciting insurrection, riot, conspiracy, uprising against the constituted [fol. 10] authority of the State and for the purpose of establishing combined resistance to and against the lawful authority of the State of Georgia, the names and contents of said books, papers and writings in part are as follows hereinafter, their full contents being of such a nature as that they cannot be copied in full in this indictment: Book A. "The life and Struggles of Negro Toilers" by Geo. Padmore, pg. 46. Therefore unlike their black brothers in Africa the negroes in the new world have had centuries of contact with the white capitalist civilization. But like the negroes in Africa they are subjected to the same barbarous methods of imperialist plunder and exploitations. • • • In no other so-called civilized country in the world are human beings treated as badly as these 15 million Negroes. They live under a perpetual regime of white terror, which expresses itself in lynchings, peonage, racial segregation and other pronounced forms of white chauvinism. • • • They are absolutely at the mercy of every fiendish mob in-

cited by the white landlords and capitalists. Banks of business and professional men make periodical raids upon the black countryside, where they lynch Negroes, burn homes and destroy the crops and other property belonging to the blacks. In most cases of lynching the negroes are burned to death after their bodies have been soaked in gasoline, while others are hanged from trees. On these occasions the entire white community turned out to witness the bloody spectacles, which were made "Roman Holidays."

And many other passages of similar import as on page 48 of said book, white people are accused of burning the homes, destroying crops, killing live stock, poisoning drinking water wells, murdering and lynching unarmed men, women and children.

Book B. "Party Organizer"—Special Penum Issue—Vol. V.—May-June, 1932, No. 5 & 6.—Issued by Central Committee Communist Party U. S. S. Same being a book of instructions to the organizers of the Communist Party and containing the details of methods of approaching factories, cotton mills, industrial plants and shops and containing instructions, doctrines, and teachings as to the methods of preparing and organizing strikes in the various shops, [fol. 11] industrial plants, cotton mills and other places where people work, containing information as to methods of training and developing and organizing workers and leaders in the Communist Party and in building up and bringing on strikes, riots, and revolutions.

Book C. "Communism and Christianism," by Wm. Montgomery Brown—"banish the Gods from the Skies and Capitalists from the Earth and Make the World Safe from Industrial Communism," in part as follows:

Page 6: "As the machinery of capitalist government including the armed forces of the nation, conserves the monopoly by the capitalist class of the wealth taken from the workers, the working class must organize consciously and politically for acquiring the powers of government, national and local, in order that this machinery, including these forces, may be converted from an instrument of oppression into the agent of emanicipation and the overthrow of privilege, aristocratic and plutocratic."

On pages 98 and 99 of said book: "The trouble with every reformatory socialism of modern times is, that it under-

takes the impossibility of changing the fruit of the capitalistic state into that of the communistic one, without changing the political organism; but to do that is as impossible as to gather grapes from thorns or figs from thistles. Hence an uprooting and replanting are necessary (revolution not a reformation) which will give the world a new tree of state.

Capitalism no longer grows the fruits (foods, clothes, and houses) which are necessary to the sustenance of all of the world. Hence it must be dug up by the roots in order that a tree which is so organized that it will bear these necessities for the whole world may be planted in its place.

Certain newspapers called the Daily Worker and The Southern Worker being the official organ of the Communist Party and containing various articles, criticising the courts of the United States and the various states and designed and intended to scatter and carry and implant in the minds of the people and citizens of Georgia hatred and contempt [fol. 12] against all constituted authority of the State with intent to the overthrow, denial and defeat of the lawfully constituted authorities of the State.

And all of the acts of the accused being done by accused with intent to formulate and to establish and to set on foot and to make effective combined resistance by force and violence in the lawful authority of the State of Georgia and to cause, produce and bring to pass the defeat denial, and overthrow by acts of violence, by unlawful means and by revolution, the lawfully constituted authority of the State of Georgia as above set forth and all of the acts of the accused were and are * * * contrary to the laws of said State, the good order, peace and dignity thereof.

John A. Boykin, Solicitor-General, Special Presentment Prosecutor.

AR—Jail.
Spcl.

Witnesses: J. J. Chester, F. D. Watson, 175 Decatur St., George Pounds, E. A. Stevens, c/o Solicitor's Office.

Sol's No. —. Clerk's No. 37812.

[File endorsement omitted.]

[fols. 13–13-56] EXHIBIT "C" TO PETITION

January 17, 1933, 9 A. M.

The following evidence was delivered before the jury:

F. B. WATSON, sworn in behalf of the State, testified:

Direct examination:

I am a city policeman. I know Angelo Herndon. I first came in contact with him last July, at the post office in this city, when I arrested him; at the time I arrested him he was in the lobby of the post office, here in the city of Atlanta; we had orders to go to the post office and watch a box, No. 339, I believe, and to arrest the one that came there after the mail; we were there something like an hour, this negro boy, Angelo, came up. He came to this box, taken his mail out and we put him under arrest; at the time he unlocked his box and taken the mail out of the box, he had with him at the time a paste-board box containing books, papers and pamphlets. I would recognize that box if I saw it; this box and its contents is what we taken off of him. I recollect examining the box after the arrest. I identify that box and those pamphlets as the contents of the box at the time of the arrest of this defendant. I searched him at that time. I saw him open this mail box, he had a key to the mail box; this looks like the key that he had; this straight key that looks like a door key, he told us that belonged to his room. After he was arrested, we went to his home, at the place he said was his home; he first taken us over on Coleman Street and he didn't live there; so we asked him where his room was at after we left this Coleman Street address, I forget the number, and he taken us on Hubbard Street; we found his room there on Hubbard Street. I said something to him about where he lived before we started from the post office with him; we found out that he didn't live on Coleman Street, because we went there and took him with us. He went with us to this address on Coleman Street; we went in the house and we asked a negro man did he know this boy; he said he knew him but he didn't live there; this boy was there; after that, we asked him what did he have to say to that, and he says he lived on Hubbard Street, and he

taken us to his place where he lived on Hubbard Street. When we got to the place on Hubbard Street we went in and asked who lived there; a woman by the name of Carrie [fol. 13-57] Jackson lived there; she said he roomed there, and showed us his room, and we went to his room and searched it; when she said that was where he lived, Angelo was with us and I heard Carrie Jackson identify him, and he heard Carrie identify him as connected with that room; we then searched his room and all his papers and things that were in his room. That place at the post office and on Coleman Street and Hubbard Street is in Fulton County, Georgia. I recognize this box and suit case as the two pieces we got out of his room; these newspapers, books, periodicals and such, they came out of his room. We talked to him about where he got those things and how he came into possession of them; before we started our conversation with reference to the documents and things, we did not make any threats against him or offer him any reward or any inducements. He told us they were sent to him from headquarters of this Communist Party, in New York. He told us he was working for someone by the name of Spence, that lived on Peachtree Street, but he didn't know the number. He did not at first discuss the nature of his work, he did later on; as to the nature or purpose of his work, he said he was sent here by this Communist Party as an organizer for them, representing this Communist Party; I don't remember now how long he stated he had been here. He did not say what he had done as such organizer. We ta-ken him them and locked him up.

Cross-examination:

I am a policeman. I arrested Angelo Herndon at the Post Office; at the time I arrested him he was taking mail out of a box; he got two or three letters out of the box; he didn't get anything else out of the box. I was not looking for Angelo Herndon before I went to the post office; we didn't know who we were going to catch at this box when we went there; we did not look for any one at all on Smith Street in connection with this particular case. When I got the alleged confession from Angelo Herndon, Mr. Chester was with me at that particular time. At that particular time we were at police station, in the detective department, on the second floor; we did not go up on the fourth

floor; there is no fourth floor there. I did not know there was a big electric chair stationed there; I never have seen it. Mr. Chester and myself searched Angelo's house; we did not have a warrant to do so, we searched him without [fol. 13-58] a warrant; we got these papers and magazines and periodicals. I didn't read them, I don't know what they are; they are there, you can look at them and tell what they are; I can identify them just by looking at them. We searched Angelo's person; we did not have a warrant to do so. I did not see Angelo Herndon circulate this material. I have never been to a meeting and found Angelo there; I have never heard him make a speech. He said he is a member of some kind of organization; Mr. Chester heard him say that. I did not carry Angelo Herndon and have him sit down in a big electric chair at the police station; I didn't know there was one down there; we carried him to the detective department on the second floor; when we got there we talked to him, that's all. Angelo Herndon said this material was sent to him from New York. I don't know that they were sent from New York. He got some mail from the post office; this was mailed in Atlanta—here's the mail we taken off of him, that he got out of the box. I did not see Angelo Herndon attempt any combined resistance to the State government or any of its officers; he was perfectly peaceful when I arrested him; he came to the post office box and was taking his mail out when I arrested him. This box that he had, we got that off his person at the time we went to the post office; he had that under his arm.

J. W. CLONTS, sworn in behalf of the State, testified:

I am a United States post office clerk in the city of Atlanta, and have been connected with the United States post office about six and a half years. The renting of boxes to individuals at the post office is my job entirely. We have an application here showing James Dicks rented box No. 339, January 8, 1931, and held same until September 30, 1932. I am not acquainted with Angelo Herndon; I wouldn't know him if I was to see him. I recognize this document here with this number 1201 on it; it is our serial number, 1201, issued for this box, No. 339; has my initials here as taking in the $2.00 for three months. The document

dated September 29, 1931, No. 1039, I recognized that, and it is for box 339. I collected the rent on the box. The document here, No. 1557, is our serial number, for box 339, that [fol. 13-59] was received by my superior officer, $2.00, and is for the same box, No. 339. Number 798, the 798 is our serial number for box 339, collected by myself, December 30, 1931. I see James Dick in the court room; he is sitting right there between the two gentlemen at the end of the table, the gentleman with the glasses, to the right, with the red striped tie on; that's the man I know as James Dick. I did not rent the box myself, but I collected the rents three different times; that is the man that paid me the rent on that box at the post office.

Cross-examination:

I am employed at the United States post office as clerk. That fellow over there with glasses on is the man that represented himself as James Dick; he did not always wear glasses. I'll give you the exact dates, how long he has been renting box 339; it was around January 8, 1931. The last time a payment was made on that box was for the quarter beginning July 1, 1932; it was made probably made in August, 1931, I believe is the date; the date on this receipt will show, but, as I remember, that's the last time I saw James Dicks, when he paid this rent. I did not rent the box myself, but a colored man who represented himself as James Dicks always paid the rent, I don't know who rented it.

F. B. Watson, recalled in behalf of the State, testified:

This folder was in the possession of Angelo Herndon at the time of his arrest; these post office rent receipts were in that folder at that time.

Cross-examination:

As to whether at the police station, on the last floor, they have installed there a big electric chair, a coffin and a skeleton, I don't know what is up there; I don't know anything about that. I don't remember telling Angelo Herndon when I was carrying him to the station house that I had been to 860 Smith Street looking for him. When Angelo

Herndon made the confession which I stated here, we were at the police station in the detective department, on the second floor. Mr. Chester was with me and heard it.

[fol. 13-60] Redirect examination:

The man right here with the red striped tie on is the one that gave me the name of Angelo Herndon at the time of his arrest, that is, the defendant in this case. We were in Fulton county, Georgia, when that occurred. He did not wear glasses at that time.

E. A. STEPHEN, sworn in behalf of the State, testified:

I am connected with the courts of Fulton county; I am one of the assistants in the solicitor general's office. I know a man who gave the name of Angelo Herndon to me; I talked with him after his arrest, in the grand jury room of this court house; my understanding was that he had just been arrested and brought in the court house and I questioned him in the grand jury room, one of the officers of the police department was with him at the time, but I don't recollect who it was; it was a police officer, or officers, brought him there, and one was in the room while I questioned him, I tried to refresh my memory and find who it was, but I don't recollect. It would be a hard thing to remember at this time what I said to him. I can give you the substance of the things; I did not make any promises to him or offer him any inducements to talk to me, and made no threats at all against him. As to what I talked about, if I may I will start at the beginning of my knowledge of this affair, and I state that on complaint from one of the county commissioners that he had received a certain scurrilous letter through the mail, which bore post office box No. 339, I called on the chief of police to have that box watched and the man who got the mail out of there taken in charge and questioned; the same day, Officer Watson, or Mr. W. B. Martin, I don't recollect which, brought this darkey, Angelo Herndon, to the solicitor's office and I talked to him in the grand jury room.

Attorney Davis: Mr. Stephens refers to the defendant as "darkey". Your Honor, we wish to remind the prose-

cution if they insist on using such opprobrious terms to the defendant, we will have to ask for a mistrial, because it is prejudicial to our case.

The Court: I don't know whether it is or not; but suppose you refer to him as the defendant.

[fol. 13-61] Your Honor, I wish to state that "negro" is the name this man referred to his race *by* in his conversation with me—these are captious objections.

Attorney Davis: But he says "darkey".

The Court: Well, refer to him as the defendant then.

I will refer to him as "negro" which is better; he gave the name of Alonzo Herndon—Angelo Herndon; he is the darkey with the glasses on, in the middle, the second one with the glasses on—he didn't have them on at that time; he stated that he came here from Lexington, Kentucky, where he was an employee of some coal mine company; he stated that a man by the name of E. Doran came there and got him interested in the Communist Party, and that he joined the National Communist Party at Lexington, Ky.; he stated that this coal mine association or organization that he belonged to was not communistic, but that he joined the National, the Communist Party at Lexington, Kentucky, at the instance of E. Doren—D-O-R-E-N, as he spelled it; he stated that he was sent to Atlanta to take the position of organizer for the Communist Party; now, when he was questioned by me as to what his compensation or interest was, he stated he was paid $10.00 a week, sometimes in cash and sometimes in money orders. At that time he stated to me that his duties were, as organizer for the Communist Party, to call meetings, educate or disseminate information regarding the party at these meetings, to distribute literature, to secure members for the organization and generally to work up an organization of the Communist Party in Atlanta. I don't recollect whether I asked him the question how long he had been here in Atlanta. He said he had held or attended two meetings, and then later when questioned about where they were held he designated the meeting places of three meetings that he had called and had been held, one of them on Auburn Avenue, I believe, one in the neghborhood of Tiger Flowers' home as he expressed it, and one on East Cain Street, I think it was. I made memoranda at that time of the things he said to me; I

made my memoranda so that wouldn't mean much to anybody else, because they were all private and made in as few words as possible. He did not state at whose homes these meetings were held; he stated the first meeting was held on Auburn Avenue in a vacant lot, the second was [fol. 13-62] held on the west side near Tiger Flowers' house, that is as definite as he put it; the third in a vacant house on Ellis Street, was his statement to me about the meeting; he did give me the names of persons that he said were members of the organization; said he only have five or six actual members at that time—actual members, as he put it; said the meetings were sometimes in vacant houses and sometimes in private houses; he gave the name of James Brown, of South Atlanta, along about Clark University, on the street turning off to the left, as one of his actual members that he designated, Willie Hendrick, in Decatur, on Atlanta Avenue, was one; Henry Brown, at the same address as James Brown; James Eberhardt, 860 Smith Street, as another, and there is one or two more that he said he couldn't recollect the names of. At the time the officer brought him there he brought that large paste-board carton down there filled with quite a quantity of literature; I have examined this one here and it appears to have the same periodicals and other things in it, and he brought a suitcase, which is the one there before you and appears to contain the same things that were there when I questioned him. I recollect quite well seeing this document at that time; I had a conversation with the defendant with reference to the authorship of that document; we had quite a little controversy about his statement that he wrote it. I told him I didn't believe that he did, and I thought somebody else wrote that; I didn't think he was capable of composing it; he insisted that he was the author of it himself, and two other documents, of which there are quite a number in the suitcase, or were at that time; I think those writings or those documents are here in that suitcase; there are two that he claimed he wrote himself, they don't seem to be in here; there were two different circulars, quite a quantity of each one of them; they are not here; they were in this case when I got it out Sunday afternoon; it was a pile somewhere around a couple of inches thick, when I got these out Sunday—here they are, they don't seem to be all

here; now, here is what I referred to, there are two different circulars here, I mean the composition of each is different from the other; we discussed the authorship of these and of these and of these two; he stated that he composed one or wrote one and sent his manuscript to Division Headquarters at Chattanooga and had it multigraphed and returned [fol. 13-63] to him, and I made a memorandum of the number that he said was returned to him for distribution; he stated that the first was drafted by himself and sent to Chattanooga to have multigraphed and they returned ten thousand of them and he had them distributed; he stated that the other of the two circulars was composed in Chattanooga, multigraphed there and seventy-five hundred, I believe it was—I have it here seven hundred and fifty, but I think he stated seventy-five hundred—were returned to him for distribution, and that he had the bulk of those distributed here in Atlanta. I couldn't tell you which one of these he said he wrote; he said the first one, and indicated at that time, but I didn't do anything to identify them. I don't see any date on either one of them so as to identify them as to any particular time and the contents of the thing, though, rather indicates to me that this one I hold in my hand, headed "Workers in Atlanta, Employed and Unemployed Negroes, Attention," was the second, because it refers to something that was done at the demand of him and his friends; and the first one, the one with the pictures on it, I think is the one he claims he wrote; I wouldn't be positive, one or the other he stated he composed, and that the other was written in Chattanooga and sent here to him—a manuscript of several pages, which he stated he wrote with his hand. This document here is the one I stated I had a controversy with him as to his writing; that is the one I said he insisted that he composed. He made these statements to me freely and voluntary; I want to state, further, among the other things he said in talking to me about this quantity of literature here in the suitcase and in the grip, a part of which you will notice has never been taken out of the wrapper—there are several packages like this—in questioning him what this was sent to him for; he stated for distribution at his meetings; the same with reference to many of the books that he had in these two receptacles there. He stated that he had called three meetings and undertook to tell *we* where he held them. I don't

recollect seeing this document here of July 10, but I will state that he stated to me that his organization of communist- at that time had only five or six active workers, I see that is the same information. I can't say that I definitely call at that time seeing this document entitled "Minutes of the Foster and Ford Club, July 8, 1932, Club 3," [fol. 13-64] and the meeting started at 8:30, I know, though. that the box and the suitcase were taken charge of by me and put under lock and key, and so far as I know they were never taken out until I got them out to use Sunday afternoon. He said that he called the meetings and held them and conducted the meetings; as to whether he said he made any speeches at any of those meetings, I don't know that the word "speech" was used.

Cross-examination:

I am Assistant Solicitor General, as I stated a few minutes ago; I am not interested in this particular case any more than I am in all cases which are indicted by the Fulton County Grand Jury. When Angelo Herndon made his confession, as I stated before, I don't recollect what officer it was who was present besides myself, but some member of the Atlanta police force. When Angelo Herndon undertook to tell me about the meetings, I don't know whether he ever finished or not. I don't know of my own knowledge any meetings with speeches, I didn't attend, if I had I would have had him arrested then; I am not particularly prejudiced to him according to my last statement, but if a man has violated the law, as an official of this State, I would have him arrested for doing it; he violated the law stated by Mr. Hudson in your presence in outlining this case, you know what it was, you heard it. It is not true that I had Angelo Herndon in the grand jury room attempting to get some information that I might indict him, I was undertaking to find out about his activities here. I was able to find out a good deal, by questioning him. As far as my personal knowledge is concerned, I would not state this confession was all the evidence we have against him; I know nothing personally. I know Angelo Herndon said he was the author of some of the leaflets. I have no personal knowledge of any of the acts that have been alleged to be committed in the indictment by the defendant.

* * * * * * *

F. B. WATSON, recalled in behalf of the State, testified:

[fol. 13-65] I am familiar with the location of Auburn Avenue, with reference to the limits of Fulton County; the entire street of Auburn Avenue is within Fulton County. I am familiar with the location of the house or residence in Atlanta that is known as the Tiger Flowers' residence, which is on Simpson Street, which is on the west side of the city of Atlanta, in the city of Atlanta, Fulton county. The whole west side of Atlanta is in Fulton county. I am familiar with Ellis Street, the entire street is in Fulton county. With reference to the city of Atlanta as a whole, all of Atlanta is in Fulton county, just a small area on the east side is in DeKalb county, all of the business section of Atlanta is in Fulton county, only this small area on the east side, a residence section, is in another county—the suburbs.

Cross-examination:

Every bit of material that was in the box I found on Angelo Herndon at the time I arrested him, I identify as the stuff in the box, every thing, even down to these little pencil stubs, I recollect these, every one, I did not write down the colors of the pencil, there was five or six pieces of pencils in the box, every little piece of booklet and leaflet, I identify it, I got the mental picture of it in my mind, so that I can identify everything there. I have never seen Herndon distribute any of the material I identify in the box, and have never been to a meeting where I ever heard Herndon speak. I have never seen him a single time resist an arrest; I have never seen him combine with any others, whether white or black, in resistanee of the State government.

Redirect examination:

I have examined the contents of this suitcase, and these boxes. I identify this bundle of what appears to be newspapers entitled "The Southern Worker," as having been found in the home or place where Herndon was living. I identify this batch of "Daily Workers," which you exhibit to me, as having been part of the documents found in his home at that time. I identify this package with this address, Mrs. Lula B. Jackson, 908 —— Avenue, Atlanta,

Georgia, and this title "Southern Workers"; this batch of newspapers entitled "Daily Worker," is some of the things [fol. 13-66] I found there at the defendant's residence; this additional batch of papers entitled "Daily Worker," "Central Organ Communist Party, U. S. A." and this batch of papers entitled "Daily Worker," and this batch entitled "Daily Worker"; I recognize this periodical, entitled "The Liberator" with the entry thereon, as one of the periodicals discovered at the defendant's home; this is another batch of newspapers entitled "Daily Worker, Central Organ of the Communist Party, U. S. A." found at the same time and place. I recollect seeing this document "Tornado Toll, 65 negroes, Atlanta World." What you now exhibit to me, which appears to be three or four copies of a paper entitled "Daily Worker" is one of the batches of papers I found at the same time and place; I recognize the "Recreator," as one of the articles found in the suitcase. I recognize this, entitled "American Press," as one of the periodicals that came out of the same place; this batch of books here, which seems to be in a serial order, the first Christian Supernaturalism, Volume 1, I recognize that, that was in the suitcase in his room; second Christian Supernaturalism, I recognize that; third, Christian Supernaturalism, Volume 3, I recognize that, that was in his room; fourth Christian Supernaturalism, I recognize that and Volume 5, that whole batch was in his suitcase, and this volume, the Bible, and this book of Christian Supernaturalism, Volume 6, Sociology, I recognize all of those; this pamphlet with the red leaflet entitled "War Preparations against the Soviet Union," is one of the periodicals found there. I recognize these papers, periodicals and documents as part of the literature I found at the same time and place. About this package with the address torn off, which appears to be a group of about three or four papers, called "The Young Worker," that was in his room with all the rest of these; this batch of papers addressed to Alonzo Eberhardt, 774-B Hubbard Street, Atlanta, Georgia, which appears to be a batch of newspapers entitled "The Daily Worker," I got those at the same time and place; I recognize the batch of papers entitled "Daily Worker," as part of the papers I found in the same place at the same time; this additional batch of the same papers "The Daily Worker," I recognize that as having been found at the same time and place; this

batch was there at the same time and place. These papers [fol. 13-67] that appear to be local papers, Georgian, Constitution and "Daily Worker," all of these local papers was together; I recognize this batch of papers called "Liberator," as part of the papers discovered there at the same time, and this batch of "Liberator"; this batch of Daily Worker and another batch of "Liberator," they were there at the same time and place; I recognize this other batch of papers entitled "Daily Worker," as found at the same time and place, and this "Liberator" also found at the same time and place, and this other batch of "Daily Workers," they were at his address, the same place; a copy of the Constitution for July 8th, and there was a batch of local papers in his room, that was one of the local papers that was in there, the Georgian, and this one, the Constitution, also this batch of Daily Workers, Young Workers and Daily Workers, they were in his room; another batch addressed to Alonzo Eberhardt, 774-B Hubbard Street, dated 10/3/29, Daily Workers, they were there at the same time and place; this wearing apparel, shirt, undershirt, socks, slip, book, toilet articles, those where in the suitcase at the time we searched his room. I don't know how many issues of these various newspapers that are in this batch in this box and suitcase, I didn't count them, but there was a batch of them that was all rolled up and wrapped up, some of them, and some of them was loose; I recognize these books here with white covers on them and this picture of William Montgomery Brown on the front, and two angels on the back, entitled "Heresy" they came from there, and this one; and this one; I looked at this batch of stuff here, this envelope, that was there at the same time and place I found these, the envelope with this address on it; this little card here entitled "Abolition" that was in his room; invoice of S. P. Richards Paper Company and I noticed this Red Bird tablet among the effects I found there at that time, all of that stuff was tied together with this batch of books, it has got some of the string on the books.

Cross-examination:

I'll just glance at the headline of the material I found there, I didn't read any of them, in the body of them. Some of the material in there is either radical or communistic in nature, I might have read a little of it. I remember Mr.

Hudson calling to my mind a certain publication called [fol. 13-68] "The Recreator," I found that in his room; I don't know whether that is of a radical nature, too, I didn't read it. I identified the keys that were taken off of Angelo's person at the time I arrested him, those were the keys to the post office box, one of them was; I don't know whether there was any other keys to that post office box, I taken that one out of his hand, and I don't know whether there was any duplicate keys held by any other person, I don't know whether Angelo Herndon was the only person that used that box, if there were any other persons that did use that box, I don't know whether they were black or white.

The State here rested.

PROF. MERCER G. EVANS, sworn in behalf of the defendant, testified:

I am a teacher at Emory University, in the department known as Economics. As to the degrees I hold, I have Batchelor of Science degree, Emory University, Master of Arts, and Doctor of Laws, Chicago University, I rank as Professor of Economics, just one of the Professors of the Economics Department, there are two Professors and two assistants. I was born at Gulfport, Mississippi; except for residences in colleges, I was there about twenty-three or twenty-four years. My undergraduate work was done at Emory University, my graduate work was done at Chicago. I have examined the books cited in the indictment against Angelo Herndon, all the way through.

As to whether I know the difference between revolutionary material and literature which isn't revolutionary, I have read rather widely, I suspect, in the field of economics, the theoretical economics, including a good deal of Anarchistic and Sociological or Communistic literature, which is, of course, on an economic nature. I have not published any books of any sort dealing with economic subjects, but I have articles; some of the magazines that have carried my articles are Annals of the American Academy of Social and Political Science, and the publication of the American Federation of Labor; the Annals of the American Academy is an economic publication of, I think rather high standing among the Professors of the Social

Sciences, while the publication of the American Federation [fol. 13-69] of Labor is a publication in the field of Psychology and social service, which is rather widely taken by Professors of Sociology, and Social Service Welfare and the American Federationist, the official monthly publication of the American Federation of Labor has frequent contributions in it of Professors of Sociology. I have read the books stated in the indictment.

I have some books in my possession here that are taken from Emory University Library, here are three books that come from Emory University Library, one from Carnegie Library, this first one is my Nicolai Lenin, entitled "Imperialism, State and Revolutionary," the second one is by Carl Marx entitled Christ, a prophet, addressed to working men, the third one is by Carl Marx and Frederick Ingalls, entitled "Communist Manifesto," Nicolai Lenin was a Bolshevik leader in Russia; that book came from Emory University Library; in other words that book is there in the library for the students use in Emory University. The students are at liberty to get these books and read what they wish.

Q. And it isn't the rules of Emory University that they should think what they wish?

Solicitor Hudson: That is irrelevant and immaterial, Your Honor.

The Court: I rule that out. If Emory University is guilty of anything, we will try them, I think even if Emory University had actually attempted to incite riot, it wouldn't be material in this case, it is a question of what this defendant has done.

I don't believe I have any other books from Emory University Library, I have one from the Carnegie and a few from my own.

I have no other books from the Carnegie Library, that's all.

Cross-examination:

I have been a member of the faculty of Emory University; this is my ninth year. I don't have this pamphlet "The Communist Position and the Negro Question." I don't have this document here, "receipt book." Emory University is a denominational school; I do not belong to the denomination that founded that school, but to another

[fol. 13-70] one, Congregationalist, in other words, I am not a Methodist, and am not an Episcopalian, I am not a Communist, and I am not a revolutionalist; I am acquainted with what is known as the Communist of Soviet Russia, or the Soviet Union, of the present form of governments in the nation of Russia, that is a government which succeeded the Kerensky government, which succeeded the former Czarish government; that was brought about by a revolution, putting out the Czar and the assassination of the Czar and his family came later, not necessarily as the result of a revolution.

As to the Russian Revolution, history so regards it, that there was a revolution, the Czarish government overthrown, the Kerensky government took charge and after about six months another revolution of bloodless character in which the present regime succeeded the Kerensky government. I wouldn't attempt to dispute that, as an historical fact, what I have just said; I stated that as being an historical fact. I think I read that little paragraph in this fine print at the bottom of the page, page 6 of this document here. I stated that I hadn't seen this, this pamphlet "The Communist Position on the Negro Question," I haven't read the book. I don't think I read that in the platform of the Communist Party on which Ford and Foster ran this year in the United States for election for President and Vice-President; I think I read the Communist platform, I am not sure; yes, I read the Communist platform in the summer that was put out by the National Magazine. I have not read this little pamphlet here "An Appeal to Southern Young Workers," and especially the back part of it here beginning with No. 7 on down. I have been to Russia, I was over there this summer, I spent in Russia about two weeks, I think.

Angelo Herndon, defendant, made his statement as follows: Gentlemen of the Jury: I would like to explain in detail the nature of my case and the reason why that I was locked up. I recall back about the middle part of June in 1932, we remember that the Relief Agency of the City of Atlanta, and also the County Commission and the City Government as a whole, they were cutting off relief of unemployed workers, both white and colored, in the city of Atlanta, and we know there were citizens that suffered unemployment, hundreds and thousands of negroes and whites

each day looking for work and there was no work to be [fol. 13-71] found during those days. Well, the Unemployed Council of Atlanta which has connection with the Unemployed Committees of the United States, through the organization of the Unemployed Committees—the committee after this relief had been cut off and after over 23,000 people right in Fulton County and Atlanta, Georgia, the Unemployed Committee—which is the policy of the Unemployed Committee not only in Atlanta but throughout the whole United States, started to organize the negro workers and organize the white workers together on the same basis, because of the fact that their interest are the same, because the white workers were starving and because of the fact that the negro workers was starving, and the unemployed committee realized this, in order for the white workers to get relief, and in order for the negro workers to get relief, they both will have to get together and forget about the question of racial discrimination, forget about this question of the white skin and the black skin, because both are starving and the capitalistic class will continue to prey on this tune of racial discrimination, that the negro skin is black and yours white, and therefore, the negro is no good, and therefore they were bound to prey on this tune in order to keep the negro and white divided. So the policy of the Unemployed Committee was to organize negroes and whites together on the basis of fighting for an unemployment relief and unemployment insurance at the expense of the State. The Unemployment Committee had issued those leaflets after this relief had been cut off, which meant starvation on the part of thousands here in Atlanta; the Unemployment Committee issued those leaflets calling upon negro and white workers to attend a meeting down at the courthouse building on a Thursday morning, I forget the exact date. This was as the result of statements handed out in the local press by County Commissioners that there was nobody in the City of Atlanta starving, and that if there was, to bring them to their office and they would be willing to look into the matter. This was a statement mainly by Commissioner Hendrix. Well, the Unemployed Committee of Atlanta pointed out in this circular that there was unemployed negroes in the city of Atlanta and there was actual starvation on the part of these workers, so the Unemployed Committee called for a demonstration in this courthouse

building, about the middle part of June, and when this [fol. 13-72] committee came down to the courthouse, Commissioner Hendrix, it happened so he wasn't present that morning, and there was unemployed white women with their babies almost naked and without any shoes to go upon their feet, and there was negro women with their little babies actually *actually* starving for the need of proper nourishment and all that, which had been denied them by the county of Fulton and State of Georgia and city of Atlanta as a whole. Well, these particular negro workers, and the white workers, they came down to the commissioners' office to show that there was starvation in the city of Atlanta and that they were in actual need for food and proper nourishment for their kids, which they didn't receive. Well, these workers went up to the County Commissioners to show them these particular facts, and I think Commissioner Stewart was in at that time, and so that to divide the negro and white workers, they taken the white workers on the inside of the room and left the negro workers on the outside, this in order to continually play on the tune of racial discrimination, in order that they would be able to block the fight that the negro and the white workers were carrying on—a determined fight to get relief. So they were successful in getting the white workers inside of the commissioner's room and closing the door in the face of the negro workers and pointing out to the white workers "Well, the county hasn't any money, and of course, you realize the depression and all that but we haven't got the money." We know this, after the white workers cut out their discussion, they knew the county did have money, but they were using it for their own interest, and not for the interest of the negro workers or the white workers, either way; and they talked to the white workers some considerable time, the white workers came out, they had just about as much results as the negroes did—only a lot of hot air blowed over them by the commissioners, which didn't put any shoes on their little babies' feet and no milk in their stomach to give their babies proper nourishment. Well, these men, the white workers were in the same condition that their negro brothers on the outside were in—no one disputed the fact they did keep the negro workers on the outside. Well, as the result of this, in spite of the fact that they had come out in published statements that there

[fol. 13-73] was no money in the county treasury to provide unemployment relief for the negro and white workers, still the next day after the demonstration the county commissioners voted $6,000.00 for unemployment relief, mainly because of the fact it was shown in this demonstration that for once in the history of Atlanta and the State of Georgia, negro and white did join together and did go to the commissioners and demand an unemployment insurance because of the fact that they had worked in the city of Atlanta, have worked in different industries, different shops and different other industrial concerns located in Atlanta for their whole life, doing this work, building up the city where it is at the present time. Now, because that time, when they were in actual need of this money to hold their bodies together, and when they came before the State and county officials to demand something to hold their bodies together, they were denied it, so the policy of the Unemployed Council is to organize these workers and demand these things. They have worked as slaves, and they are entitled to those things, whether they get them or not. Of course, the workers will get them if you ever organize for them. And as the result of this demonstration after those circulars had been distributed through the City of Atlanta, from the solicitor's office he had two detectives stationed at the post office to get any one who came to get mail out of this box 339. Well, on Monday, July 11, 1932, I went up there to get mail from this box, because of the fact I was a member of the Unemployed Committee and also an organizer for the Unemployed Committee. I went up there to get mail, and these two detectives, Mr. Watson and Mr. Chester, was stationed at the instructions of the Solicitor General, to lock up whoever came up there, because of the fact they had organized unemployed workers, negroes and whites, of Atlanta, and forced the county commissioners to kick in $6,000.00 for unemployment relief. So, for this I was locked up and carried to the station house and held eleven days without even any kind of charges booked against me at the station house. The charge was "suspicion." Of course, they knew what the charges were going to be, but still in order to hold me in jail—give me the dirtiest kind of treatment that you can describe and all sort of inhuman treatment, they held me there eleven days [fol. 13-74] without even any charge whatsoever until my

attorney filed a writ of habeas corpus demanding that they place charges against me or turn me loose. This was about the 22nd of July, I still hadn't been indicted; there had been three sessions of the grand jury meetings, and my case had been before them each time, and the grand jury still hadn't indicted me, because of the fact they just wanted to hold me in jail for some time simply for organizing the white and negro worker, demanding food to keep their bodies together. Upon this basis they held me in jail all that time. So at this habeas corpus hearing, the judge ordered if I wasn't indicted the next day by 2:30 to turn me loose. Of course, the solicitor assured the judge there would be an indictment by next day, which, of course, there was, and ever since then I was transferred to Fulton county tower, where I remained there close to six months—I think the exact time was five months and three weeks. But I want to describe some of the horrible conditions I was forced to go up under in the Fulton county tower there. I was placed in a little cell there with a dead body and forced to live in there with this dead body because I couldn't get out of the place—couldn't even walk around, stayed locked up all the time. This particular fellow, his name was William Wilson, who also fought in the Spanish American war for the American principles, as we usually call them and they had him there on a charge of alimony, so he died in there as the result of the rotten food given to all prisoners in there, and for the want of medical attention. Well, the county physician just had refused to give this particular prisoner any kind of attention whatsoever, so after three days sickness, as the result of this, this prisoner died and I was forced to live in there with this dead man until the undertaker came and got him out. These are just some of the things that I had to go through in jail; after that I was sick myself, because of the fact that the food they gave me in there, I couldn't agree with it, and not only me but hundreds of other prisoners who can't eat the food. For instance, you have peas and beans for one dinner, and probably you have it three times in the week, and at times you probably find rocks in there and you crack down on them with your teeth, you don't know what it is, and you spit them out and there it is. They have turnip [fol. 13-75] greens, and just as they are pulled up out of the ground and put in the pot, that's what you have to eat,

otherwise you don't live. Next morning they have some grits—looked like they were baked instead of boiled, a little streak of grease running through them, and about a couple — of this fat back, that's what you have to live on; and as the result of this particular fight, I was forced to live in jail five months without trial. My lawyer put in demand, demanding trial, and every time the State would postpone the case, because of the fact that they knew those workers in the city of Atlanta were starving and when they come and arrest Angelo Herndon and put a charge of attempting to incite insurrection—which carries the death penalty—because of the fact that he did organize negroes and white workers into a demonstration which forced the County Commissioners to kick in with $6,000.00, they locked up Angelo Herndon on such charges; but I can say this quite clearly, if the State of Georgia and city of Atlanta think by locking up Angelo Herndon, of course, there will be more Angelo Herndons to come in the future, because of the fact there are thousand- of negro workers starving and thousand- of white workers starving and if they want to break up this organization they can go and lock up everybody in the organization and place an insurrection charge against them, then they will be able to prosecute them, because these are the basic reasons the State of Georgia had me locked up, because of the fact they knew the workers were starving and they knew the workers needed relief, and they know now the workers are going to organize and get relief. Of course, we know it will take fights and all that to develop these particular suggestions on the part of the negro and white workers. So, after being in jail all of this long time—there was continual efforts by the defense attorneys in my case to get a trial, the case was set for trial several different times and each time the State wasn't ready for trial, for no reason still, they put it off; and after staying in there so long, I was sick in there several weeks, which, of course, I asked for aid from the county physician and was refused that; the county physician came and looked through the doors and says "What's the matter with you?" I says "I'm sick, can't swallow water, my chest up here is tight and my stomach absolutely out of [fol. 13-76] order, seems I am suffering with ulcers or something," the county physician says "Oh, there's nothing the matter with you, you're all right;" I says, "I know my con-

dition, I know how I am feeling;" he says "You'll be all right." So, through friends, I was able to get some medicine in there which did do me good, because after eating all that rotten fare and stuff in there they give you I had indigestion in there, and couldn't drink even a drink of water, so after I taken that medicine I began feeling better, and I got out on Christmas Eve day on bond, my bond once was $3,000.00, and they raised it from that to $5,000.00, and from that up to $25,000.00, just in order to hold Angelo Herndon in jail all the time, and by holding Angelo Herndon in jail all the time will stop these demonstrations, which made the County Commissioners kick in $6,000.00 for the unemployed. Well, they can hold this Angelo Herndon and hundreds of others, but it will never stop these demonstrations on the part of negro and white workers who demand a decent place to live in and proper food for their kids to eat; but I want to say also, that the policy of the Unemployed Committees is to carry on a constant fight for the rights of the negro workers, because of the fact that the Unemployed Committees realize that unless negro and white workers are united together, they can't be able to get this relief, because it is to the interest of the capitalistic class to stir up all of this race hatred between negro and white workers and keep it going all the time, tit for tat, and the negro running after the white workers, and the white workers after the negro workers, and at the same time they are able to keep their eyes on the negro workers' conditions and the white workers' condition. The policy of the Unemployed Committees is to expose these things. Though there was no negroes in the United States, there would still be a racial question, probably it would be the Jews, or the Greeks, or something like that, because it is their interest to bring up all of these things, so that they can get a good profit out of the working people. But it happened that the negroes skin is black, and the white workers' skin is white, and they attempt to use this so that they can oppress fifteen million people—Well, it is a great amount of profit that we can get from the ranks of the working class, and at the same time have in mind that the white workers are [fol. 13-77] going to run the negroes, therefore, we may continue to keep our system," or of probably robbing the working classes of what they could produce. I don't have

to go so far into my case, no doubt some of your jurymen sitting over there in that box right now are unemployed and realize the situation of unemployment, and you tramp the streets day in and day out looking for work and can't find work—well, you know it is a very serious problem and the future looks so dim until you don't know what to do, and at times you go nuts and want to commit suicide or something, but the Unemployed Committee points out to the negro workers and the white workers that the solution is not in committing suicide, that the only solution is not in continuing to fight, the negro workers fighting the white workers, and the white workers fighting the negro workers, but in organization, and we will be able to get better conditions, because it is then left up to the negro workers and to the white workers to get these better conditions. Now, why do I say that? I say it because of the fact that the capitalistic class, it is to their interest to keep the ranks of the poor working class down all of the time and get as much profit from them as they possibly can. So, on the other hand, it is to the interest of the negro and white workers to get as much for their work as they can—that is, if they happen to have any work; unfortunately, at the present time there are millions and millions of workers in the United States without any work, and the capitalistic class of the State government, city government and all other governments, they have taken no steps to provide relief for those unemployed, and this question is left to the white workers and the negro workers, they will be able to organize and demand the right to live, which they are entitled to, because they have built the country up to where it is at the present time, and therefore, they are entitled to these particular things. Not only are they entitled to them, but it is their right to demand these things; so, when the State of Georgia and the city of Atlanta raised a question of inciting and attempting to incite insurrection, or attempting to overthrow the government and all of that, well, I can say, no matter what they do with Angelo Herndon, no matter what they do with the Angelo Herndon in the future, this question of unemployment, the question of unity between negro and white [fol. 13-78] races, isn't a question that happens to fall out of the sky, but it has intimately affected us and we can't deny them. We know the system we are living under is on the verge of collapse; no matter what system we are living

under, it has developed to its highest point and comes back—for instance, you can take a balloon and get so much air in it, and when you get too much it bursts; so with the system we are living under—of course, I don't know whether that is insurrection or not, but the question, it has developed to its highest point and it is back, and therefore, it is our duty and our rights to organize ourselves and demand these things, otherwise, we will continue to be starved, continue to be thrown out of our houses because of the fact we are not able to pay rent, and because of the fact that they have no jobs to give us and we are willing to work if they give us jobs, so why not give us unemployment insurance at the expense of the State and the employers, not at the expense of the humanitarians, the few who are still employed, but from the right class of people who has robbed and taken everything from the ranks of the negro and white workers, it is their duty to contribute insurance by special taxation from the Federal Government and also by the State government, that these funds are to be used for the relief of the negro and white workers.

T. J. CORLEY, sworn in behalf of the defendant, testified:

I live at 1600 Emory Road, Northeast. I am an assistant professor of economics at Emory University; my home is in Comanchee, Texas, I was born in Texas. I have been teaching at Emory, this is my second year, I have never been in Russia. I am not a communist, and am not sympathetic with communism in its entirety. I find elements within communism with which I agree, but before I could answer that question, as to whether I am sympathetic with communism, I should have to ask you to define communism. I am acquainted in some detail with the platform of the communist party in the last November election; I remember off-handedly some of the planks in the platform.

Q. Will you name one or two of them?

As I recollect, self-determination in the black belt was not one of the planks in the communist platform in No- [fol. 13-79] vember. Unemployment insurance at the expense of the State and the capitalistics was in the platform;

I am sympathetic with that plank, I approve of that part of the communistic doctrine.

I am familiar with the platform as a whole, I would recognize it if I saw it, with some changes. I don't have the platform memorized, I couldn't repeat it item for item, I am familiar with all of the principles contained in it. The first plank is unemployment and social insurance at the expense of the State and employers; second, against Hoover's wage cutting policy; third, emergency relief for the poor farmers without restrictions by the government and banks, exemption of poor farmers from taxes and from forced collections of rents or debts; fourth, equal rights for the negroes and self-determination for the black belt; fifth, against capitalistic power, against all form of political oppression of the rights of workers; sixth, against imperialism, etc. I am in sympathy with part of those. The communist party was on the ballot in November, some of the States, I believe, excluded it, a considerable number of States had it on their ballots, the communist party was on the ballots in this State. I did not vote the communist ticket.

Q. However, if you had wanted to express your approval in the ballots, by use of the ballot, of the Ford and Foster candidates, you would have placed your name on the communist ticket, wouldn't you?

A. I don't believe I understood the question, will you repeat it?

Cross-examination.

I said this was my second year with Emory. There is no little communist party over there at the University that I know of. I was not in the delegation of Emory professors which came to the solicitor's office after Angelo was indicted, I have never been to the solicitor's office. I have seen this little pamphlet here entitled "The Party Organizer," I haven't gone through the thing in detail, I have just seen it, I know some of the things inside of it. I was born in Comanchee County, Texas. I belong to the Christian Church, as it is sometimes called, the Carmelite Church. I stated that I was acquainted with the Communist platform.

[fol. 13-80] Q. And this was read off to you: "Equal rights for the negroes; self-determination in the black

belt;" you are able to tell us what that means, aren't you, Doctor?

A. No, sir.

I did not testify that I understand the planks in the communist platform, I said I was familiar with the party platform. As to whether I will now swear that I understand it, the question which you raise, I should say, is a question of opinion and not of fact, there are some questions which are capable of an answer in fact, others are questions of opinion, I could give you my opinion of what it means. As to whether it takes an opinion to tell the court and jury the ordinary Decatur Street meaning of self-determination, I think it is a matter of opinion, there are several techniques by which self-determination might be expressed, for instance, there might be a plebiscite vote, or there might be an election for representatives to a body—there are a number of ways in which self-determination would assert itself, and I think it is a matter of opinion. I have not read this little pamphlet entitled "The Communist Position on the Negro Question." I would be glad to give the court and jury my understanding of the expression "Equal Rights for Negroes," the meaning of the phrase, as I see it, it is this: These rights are equal rights, are equal rights under the law.

Q. You understand that to mean the right of a colored boy to marry your daughter, if you have one?

Attorney Davis: We object to that question on the ground that it is irrelevant and immaterial and calls for a conclusion of the witness.

The Court: He has him on cross-examination and that's a part of the language in the platform.

Attorney Davis: There is nothing whatever in the platform about intermarriage.

The Court: The same quotation he is reading there is in the platform, as I understand.

Attorney Davis: You overrule my objection, Your Honor?

The Court: I overrule the objection; go ahead.

A negro doesn't happen to have the right to marry my daughter, under the laws of this State. I don't know how many States there are in the Union where they do have that right.

[fol. 13-81] Q. Did you know there are twenty States in the United States where the two races can intermarry or mix?

A. No, I didn't know that, I knew there was a number, I didn't know how many.

Attorney Davis: I don't see what that has to do with this particular case, Your Honor, we object to it as irrelevant and immaterial.

The Court: He has the witness on cross-examination, and he has testified that he knows what that phrase means, and he has a right to determine how much he knows about it, on cross-examination—it isn't his witness.

That expression, "Equal Rights to Negroes," does not mean full political, social and racial equality. I have not read this little pamphlet here, "An Appeal to the Southern Young Workers," I have not seen or studied this little pamphlet here. I did not know that one of the demands of the communist party for the colored man is the confiscation of the lands, taking away from the white people who own the land, their lands and houses. I did not know that another one of the demands in the South was the right to establish an independent nation in what is known as the Black Belt, or the Southern and Southwestern portion of the United States, including the right to secede from the United States Government; I did not know that was a part of the communist platform last year, 1932.

Q. Did you know that was stated in the speech made in May, I believe, this year, by C. A. Hathaway, nominating James W. Ford, of Alabama as a vice-presidential candidate to run with William Z. Foster of New York, for president; did you know that?

A. That it was in his speech?

Q. Yes.

A. No, I didn't know that, I don't know that I have seen his speech.

Attorney Davis: Your Honor, in this particular case, the witness testified he was qualified, and knew something about the platform, but Mr. Hudson is continually asking about questions that are not in the platform, he is continually asking him about questions that he didn't testify that he knew anything about; and we ask that those questions be ruled out and stricken from the record.

[fol. 13-82] The Court: Well, he has him on cross-examination, and he has asked if he knew these things were said by the candidate of the communist party—an advocate of the party—he has him on cross-examination and I think he has a right to do that. I overrule the objection.

(The defendant here rested.)

W. T. TURNER, sworn in behalf of the State, testified:

I am engineer and steward at the jail; I have charge of the preparation of the food for the prisoners at the jail; my duties are to see that they are properly fed, about the maintenance of the building in the way of repairs and everything, in other words, the jail is the place for the sheriff's prisoners, he is the custodian of the prisoners, and I look after the cleaning and care and the upkeep of the building. I will say no rotten food is given the prisoners, we buy the best beans that can be bought, baby lima beans, white beans and California black eyed peas, we don't serve a native grown pea, that is, a Georgia grown pea, at the county jail. A man named Wilson did not die as the result of rotten food and lack of medical attention at the jail. I wouldn't want to say I remember the name exactly, but a man named Wilson did die at the jail, we were looking at the records a while ago, and if I remember correctly, it has been a little bit better than two months ago. Just as soon as we find they are dead, we notify the undertaker and they come and get him immediately, as soon as they can get them out. There has been no complaint of men dying from lack of attention that I know of, I think I would have known if there had been. I remember Angelo Herndon and recall his period of incarceration; he was not subjected to any inhuman treatment whatever, he was not subjected to any rotten food, I remember going to him and talking to him personally about his food, he wrote a letter out to a friend, I went to him and says, "Angelo, aren't you getting the same food the rest of the boys in the cage are getting?" He says, "yes;" I says "well, what's wrong with it?" He says, he wanted something, of course, that the county didn't furnish; I says "well, we can't give you any extra variety of food, we give you good wholesome food here, the same as I eat myself

[fol. 13-83] and every prisoner in the jail gets the same food," and he says to me then well, the food was all right, but he wanted something different; members of the sheriff's force eat the same food furnished the prisoners, and I myself eat the same.

Cross-examination:

I do not confine myself while at the jail solely to food. I have other duties to perform. Whenever I feel like it, I eat at the jail, this morning, I ate breakfast the same as the prisoners did. There is not one iota of difference between the preparation of the food for the prisoners and food for the officials, unless I buy it myself, ham or something like that; I mean, at times, I go out and purchase food and come back and cook it myself, and we allow prisoners the same privilege, too, whenever they want anything we'll order it for them if they have the money, if they want a chicken or ham or eggs or anything like that, if they tell me, "Mr. Turner, will you get me a chicken?" I'll say "yes," and get it and prepare it for him, we furnish anything they want. I had a conversation one day with Angelo Herndon, he did not express to me any objections to the condition of the food, he said the variety of the food, he wanted something different, and I told him "we give you stewed fruit, stewed peaches or prunes, if the doctor says give you milk, I'll give you milk, he did not tell me that the rocks and foreign matter in the food was such that he couldn't eat it. I do not know of any inhuman treatment at the jail, there is none, unless a man—if you call it inhuman, whereby if he violates the prison rules, he is locked in a cell to punish him that way, we do that sometimes where they are unruly, that's the form of punishment, but putting them in the cell, locking them in the cell to themselves for twenty-four hours, but they are fed their food right on. I have never heard of any official at the jail exercising inhuman treatment to any prisoner. I spend anywhere from eight to sixteen hours a day at the jail. In the jail there is no discrimination whatever between negro and white prisoners, as to treatment, of course, they are segregated, they are put in cages, and the negroes get the same treatment the white prisoners get, every cage is constructed alike, there is no difference. I have had objections to the condi-
[fol. 13-84] tions of the food, for instance, we may serve

collards or cabbage, well, they don't like it, don't like cabbage, I won-t hear so much from the colored as from the whites, we served collards two days in succession last week, some of the white boys didn't like it. If I find one dead, I immediately notify the jailer, he notifies the undertaker to come and get him, and as soon as the undertaker comes he is taken out of the jail, I would consider that a part of my duties, or any other officials. I make rounds of the building every day, I don't make rounds particularly to see whether there are dead bodies or not; it isn't possible for me to tell in every instance after a person dies, how quickly his body is gotten out of the jail, that depends on how long it takes the undertaker to get there; it isn't possible for a person to die there and two or three days expire before his body is obtained, there has never been a case of that kind; the system at the jail that makes that impossible is because, as I stated, as soon as we find there is a dead body in one of the cell blocks we notify the undertaker immediately and he comes and gets it in just a few minutes. The cells and conditions there are always sanitary, as much as possible, at times, in some of the cell blocks, it isn't as clean as others, we have to depend on the man himself largely to help us keep the place clean. Every cell is ventilated exactly alike; the ventilation pipes on the east wing, it comes from the north and south, and on the west, it's the same way, on the north and south, it comes from east and west. I have never known of any case where a prisoner's health was impaired due to unsanitary conditions of the jail, of course, we don't claim it is a hotel, we claim it is a county jail and kept in as good condition as it can be kept, considering its age; as to whether it is now unfitted for the use of prisoners, considering the age of the jail, there's lots worse in the country, and there are some jails that are more modern.

Redirect examination:

The jail has been overcrowded with prisoners during the past six months, the normal capacity of the jail is about, I would say, 480, that includes families' quarters and all; a few days ago they had 486, it has been up to maximum capacity for the past few months, and sometimes over [fol. 13-85] the maximum amount, take first and second, east it is for colored, three and five for white, and some-

times we have to really double them up in one of the east wings, or maybe the west wing. There are available for prisoners a county doctor and a government doctor. Doctor Blalock, is the county doctor, and I forget this government man's name, he is a new man, he has been down there a couple of months. Doctor Blalock, is supposed to make a round of the building every day, he comes every day, sometimes he comes twice, visits them and gives treatments, goes from cage to cage and says "Who wants to see the Doctor?" and if I am in one I say "I do," and if it is necessary they take me up to the clinic on the fifth floor, and administers to me the best he can, every man there can seen the doctor if he wants to let the doctor know he wants to see him. We have a hospital ward at the jail, we have a clinic there, a room fourteen feet square.

Recross-examination:

We have a hospital ward—we call it a hospital ward but it is seldom used for that purpose now; where a colored man gets sick we try to segregate them the best we can, we have a cell block there set aside for that purpose; there is no colored hospital ward, this hospital ward, as I say, is seldom used for sick people, it is used for men who sleep there, we have a room, as I say, called a white hospital ward, but the clinic, the white fellows use, and colored fellows use it, to-; I said to Mr. LeCraw that we had a hospital ward but it is seldom used for sick people, as I stated, it is used for the boys making time, serving sentences in jail, they occupy this room to sleep in. What I call the white hospital ward is not the same thing I call the negro hospital ward, it is a cage; white prisoners and colored get the same treatment, as far as the clinic is concerned, they go to the clinic, and the doctor takes the white and colored to the same clinic and waits on them. As to the places they are kept, the white prisoners and the colored prisoners are kept in two different types of places, the colored in the cage and the white in what we call the white hospital ward. For your benefit, I may say, if the judge will pardon me, we have gone so far as to take the colored fellows there when they were sick and in need of [fol. 13-86] attention and put them in the white hospital ward, put beds in the hall and everything, and wait on them

the best we possibly could, there has never been a colored man in that jail that suffered for want of attention if we knew it, he gets as good treatment as the white man does. We have a white hospital ward and have a cage used for sick negro prisoners, they have to be very sick to be put in the white hospital ward, a white prisoner, if there is room for him there, he is taken there, he generally goes to the Grady Hospital; as to how sick you have to be to be put in the white hospital ward, that's up to the doctor; I know that the doctor, when he comes there, is supposed to treat every prisoner that needs treatment, and to the best of my knowledge, he does, I'm not with him all the time, I say he is supposed to, and to the best of my knowledge, he does. As I say, it is part of my work, or any official's, to point out prisoners to be treated, if a man needs medical attention, to do the best we can, any man who needs medical attention or anything else.

R. N. Holland, sworn in behalf of the State, testified:

I am the jailer in charge at the jail of Fulton county; I am there from 7:00 in the morning to 3:00 and 3:30 in the evening. A man named William Wilson did not die there from rotten food and want of attention, I recollect the instance of the death of William Wilson; I came to the jail on that morning, on September 10, I think it was, they called me from home, I told them to send his body to Howard's undertaking place, the man making his rounds, he found the man, the doctor was waiting on him, Doctor Blalock, county doctor, can tell you the same thing; he hadn't been dead but a few minutes, something like that, I do know it was not absolutely any period of days. As to whether or not rotten food is given to the prisoners, I went down there Sunday morning, early. Saturday night I was there and ate my breakfast Sunday morning in the kitchen, and I should say it is not rotten, because I ate my breakfast there last Sunday morning, the same food, sausage and biscuit and coffee, I ate breakfast in the jail Sunday morning, because I was called there Saturday night at 12:00 o'clock. I recollect the period that this defendant, Angelo Herndon, was a prisoner there at the jail; he [fol. 13-87] was treated just like any other colored prisoner in the Fulton county jail, they are all treated the same, he

was treated just like any other colored man, up in what we call the first east and is fed *the rest* as the rest of them; he was fed, I should say, just ordinary common food, just good food like they serve to the prisoners all the time.

Cross-examination:

I am acqu-inted with the conditions of the jail in general, I should be, I have been there sixteen years. I remember Wilson dying at the jail, I remember when they had called me at the jail when he died; they got his body out of the cell back there in the cell block where he died, I don't remember the number of the cell; I don't know whether there was anybody else in the cell w-h*en* him; I didn't go back there to look and see, because he was moved out when I got there. I did not tell the defendant, Herndon, that he had better get out of town after he got out of jail, I had no reason for telling that. I absolutely did not make any threats of any sort about Herndon, I don't think I ever spoke to the man more than two or three times while he was there. With regard to the approximate size of the cells, there's two sleeping bunks in the cell, the exact size I don't know, but there's plenty of room in there, there is a commode in there, some of them, and wash basin, the commode is inside of the cell, all of the cells—well, I won't say every cell, either, there might be some cells where they haven't. The food there is not rotten, as I say, I ate breakfast myself there Sunday morning, the same food the prisoners were served. They all receive the same treatment. We don't make any distinction except in the case of murder, a fellow sentenced—the electric chair, we put them in some of the smaller cages. As to whether we have a white hospital ward, we have a ward where a lot of trusties sleep, but where a man is sick, sometimes we put him there. We do not have a colored ward, we used to have but we don't now, I would say it was somewhere back in 1925 or 1926 that we had one, we don't have a hospital ward there because we don't have occasion to have them. After a prisoner dies, his body is gotten out very quickly by the undertaker, as soon as we call there is one there in less than thirty minutes; I couldn't tell you how much time transpires between the death and the time we call the [fol. 13-88] undertaker, because when a man makes his round with the flashlight he goes to every cell block, at least

every hour; it is possible for him to walk by a cell and see a man on the cot and think he is sleeping when he is dead, a man died in jail last week, and a man sleeping right -side of him found him dead—the man wanted to give him his coffee and called for him, and the man lying in bed went and shook him and he said "Why, this man's dead," but the man was up at 4:00 o'clock when they called the prisoners to come out, and that was 6:00 o'clock, and he was in Howard's undertakers place before seven o'clock. It could not be possible for a man to die there and a day or so elapsed without some deputy sheriff or somebody knowing he was dead, no such thing as that is possible; it is possible for a prisoner to send word that—cell-mate is dead, but I have got men that don't do anything else but go around them cell blocks, not looking for dead bodies especially, but looking around there to see what is going on. If I have any objections as to the unsanitary conditions of the jail, I investigate it, I always investigate, if I got any complaint whatever, I got a complaint from this man you are speaking about, from some foreign organization, that he wanted ham and eggs for his breakfast, I got that and I went and told him he would be served his breakfast just like anybody else, just whatever the jail feeds. As to whether the jail food is at all times free from such matter that would make the prisoners ill, I know it is good food, there is no fancy food, there is no fashionable stuff cooked for anybody; they buy good flour, as I stated, I had breakfast there Sunday morning, I eat there very often, I eat my dinner time and time again, day in and day out, dinner is set down there in the kitchen, the same food; I do not go out and buy food and bring it back to be cooked, if I go out and get food at all, I go out and get cooked food, I don't go out and get cooked food often, I do whenever I want to, and I can tell you another thing, if a prisoner in there has got something he wants cooked, we'll cook it for him. This fellow Wilson died there, if he had been bad off we would have moved him out and put him somewhere else and taken care of him, we do that, and put men to stay with them night and day, we put them sometimes in the hospital room—there's a room up there—a man bad off, and a doctor looks at him and says he is bad off, I move him; this man, Wilson, wasn't bad off, he died very sud-
[fol. 13-89] denly; the doctor is here, he will tell you what he died with, my recollection is it was heart failure.

DR. J. C. BLALOCK, sworn in behalf of the State, testified:

I am a county physician of Fulton county. I have been a practicing physician since 1921; I was stationed at the Grady Hospital for 20 months prior to my present work, and after that I was a practicing physician here in the city of Atlanta, in the general practice since that time; I have been county physician two years the 1st of January. I go to the jail usually every day; describing a typical day's work on my trip to the jail, we have a man that goes around each cell and checks up on the number sick and when I got around, if there's any of them that isn't able to go to the hospital, then I prescribe for them in the cell, if they are able to get up there, they are carried up there and I prescribe what treatment is necessary, if not, I treat them in the cell, and if a man is sick, there is a man in charge, which is another prisoner, of course, if he is bad sick or anything we think mighty serious, of course we send this patient out to the hospital, but some lingering illness which he has had for several months before he came in, he is cared for by another prisoner that is in charge of this department, we try to pick one intelligent enough to handle the cases. I recollect the incident of a prisoner named William Wilson who died in jail; I had been treating him several days prior to his death; he had a heart condition, he had a condition what we call a hypertension and arteriosclerosis, which is a hardening of the arteries, and had a valvular heart disease, he had consulted me for that; I think my record shows September 10, I was called to the jail when he died and I saw his body; I had treated him the afternoon before for this heart trouble.

Cross-examination:

I make a round practically every day, I don't go every day but I did at that time, because we had some illness. I make a round practically every day, and then I have a man in the jail who checks up each and every day, and makes report to me; he isn't a doctor himself; as to whether [fol. 13-90] it is possible for a man to be ill on one of the days I am not there and died for the lack of medical treatment, it is possible a man can die standing up, if that answers your question, it isn't ever any time they can't get me within a very short period of time, in fact, I can be

gotten more quickly than they can get their home, because my office keeps in touch with me and I make as much as three and four trips a day, I make a round in the morning, and less than two hours—I have gone I will be called back to see the same man, I make a call each day to the front, and generally make a complete round of the cells every day, but it is checked up every morning that goes by, every cell is checked, and the question is asked if there is anybody sick, if there is anybody sick officers pass all during the day, I think about a period of about two hours, something like that, and if there is anybody sick the officer goes and makes a trip to the front office and the front office calls me. This man that makes the round in my absence and reports to me is not a physician. I remember the case of William Wilson; I treated him before he died, I saw him several times, I don't remember just how many days, but I saw him several times, almost from the time he came in until he died, I would say, two weeks or three weeks, I know it was that long, because I saw him every day for several days. He died from heart disease, I mean, that's what my diagnosis was, of course, I'm not infallible. No autopsy was performed on the body, I asked if they wanted one and I got an answer no—I don't know who it was. As to whether I would consider Wilson a pretty sick man up to the time he died, I consider anybody that has got a heart disease pretty sick, but they go along ten or fifteen years with it, or probably longer than that, I have observed some longer than that myself. As to whether my treatment during the two weeks he was there aided him or bettered his physicial condition or prolonged his life, the answer to that is the death, I would say not, but he said he felt better, he told me that, at least, but that isn't necessarily that he was better, I treated him in his cell. There is not a hospital or negro ward, we have places they put them in, it depends on the condition they are in, we have four or five there that isn't able to be up, and we have a place to keep them and keep a man with them night and day, he takes care of them and gives them the medicine whatever I prescribe at the time. I did not consider Wilson's condi- [fol. 13-91] tion a dangerous thing, I didn't know what was going to happen, that is the case with any heart condition, and I told him what could happen. I treated him in the cell because he was able to be around, he had an entire bunk by himself and had a man to care for him. I

don't think the white hospital ward would lend itself to the bettering of the physical condition of sick white prisoners, I have patients in practically every ward over there; as to whether it is an improvement over the regular cells, the only thing I can say would be, you might figure it would be a little better air on account of better ventilation, but I don't consider it worth any more to the patient; fresh air is vital to anybody; it isn't more vital to a sick man than to a well man, I think fresh air is vital to anybody, or at least, helpful, but I don't consider it more vital to sick than to well people, it couldn't be; if I had my way about it personally—in one of them— I would as soon be in one of the cells as in the hospital, as I say, there is a little bit better ventilation, that's the only thing that you could say is better about it; I stated I consider it is a better condition, so far as air, than the rest of the cells. As to whether there is no negro ward which has even that advantage, I think the one we have right now, I don't think there is much difference in the ventilation; it isn't fixed up exactly the same way the white hospital ward is, there isn't any other cell fixed up exactly like you would call the hospital ward, that is the only one we have, but as far as the sick man is concerned, it is just as good, I don't see any difference. I did not think Wilson was sick enough to be put in the hospital ward, not any more than he was, I don't see that I could have improved on the place he was in, that is, inside of the jail; he had as much air as he needed, I just spoke of the ventilation and the light, I think he would get enough air any place he would have went. Two prisoners is as many as I have ever seen in one cell room, they are double-decked—two beds, one can be up and one down. The jail is not overcrowded, as far as the sick department is concerned. One man was living in the same cell with Wilson, I don't know who he is, I don't take the name, except of the sick, that's the only names I take.

Redirect examination:

There is a drug supply there at my disposal all the time, anything that I want, I have a regular drug room, about as [fol. 13-92] well equipped a room as you'll find anywhere in Atlanta. If I need any drugs in the treatment of a prisoner, I don't have to go anywhere for them, I have them there.

Recross-examination:

The prisoners don't have to pay for any medicines; we give them pills whenever they need them, we average about 5,000 pills per month, they don't pay for anything, nor for their medical attention.

Testimony closed.

* * * * * * *

IN SUPERIOR COURT OF FULTON COUNTY

No. 37812

ANGELO HERNDON

vs.

STATE OF GEORGIA

Indictment for Attempting to Incite Insurrection

Brief of the Documentary Evidence—Filed July 6, 1933

The State introduced the following documents which were identified by witness F. D. Watson as being documents found in the personal possession of defendant Angelo Herndon, in a box under his arm, at the time of his arrest:

Document No. 1

Receipt Book, containing two receipts filled out with pencil and 36 blank receipts. The first receipt filled out is as follows: "July 8th, 1932. Received from Julius Klarins Three and 00/100 dollars for subsidy, $3.00. Angelo Herndon."

The second receipt bears the same signature and is the same as the first except the date, which is: "July 5th, 1932."

Document No. 2

Receipt Book, containing five receipts filled out with pencil, nine blank receipts, and 33 stubs, some filled out and some blank stubs. Receipts are as follows:

[fol. 13-93] "6/20, 1932. Received from International Workers Order Five and no/100 dollars for relief work. $5.00. Otto Hall."

"6/26, 1932. Received from M. Zipper Two & 00/100 dollars for 10-104 and 1-100 stamps. $2.00. Angelo Herndon."

"June 19th, 1932. Received from Julius Klarins, etc., Three 100/100 Dollars for subsidy. $3.00. Angelo Herndon."

The next receipt is same as last one above except date—June 26, and is signed "Angelo Herndon." The 5th receipt is signed "Otto Hall" and is same as the Otto Hall receipt (above) except date—July 5, 1932.

Document No. 3

Membership Book No. 51088 of Communist Party of the U. S. A., being a booklet of 16 pages, with various printing upon all pages, and the first page filled in with ink, as to names and dates. The first page of this one is filled out so as to be as follows:

"Communist Party of the U. S. A.

(Section of the Communist International)

Membership Book No. 51088

for

Name: Walter Heathers.
Date admitted to Communist Party: 7/10/32.
Entered Revolutionary Movement: —.
District 17, City Atlanta.
Section 2. Shop or Street Nucleus: —.
Signature of member (in ink): — —.
This book was issued on (date) 7/10/32.
Nat Ross. (Signature of District Organizer and Party Seal.)

No Party Membership Book valid unless it has party seal stamped on.

Issued by the Central Committee, C. P. U. S. A.

(Stamp is affixed, which reads as follows: "Unemployment Initiation Communist Party of the U. S. A. 10¢ Stamp 10¢.)

[fol. 13-94] (This and the other membership books which follow, being Documents numbers 4 to 10 inclusive, all have the following printed matter therein:)

"Extracts from the Statutes of the Communist Party of the U. S. A.

§ 3—Membership

"1. A member of the Party can be every person from the age of eighteen up who accepts the program and statutes of the Communist International and the Communist Party of the U. S. A., who becomes a member of a basic organization of the Party, who is active in this organization, who subordinates himself to all decisions of the Comintern and of the Party, and regularly pays his membership dues.

"4. • • • (relates to transfers from one unit to another).

"6. Every member of the Party who is eligible to be a member of a trade union must become a member of the union to which he is eligible.

§ 4—The Structure of the Party

"1. The Communist Party, like all sections of the Comintern, is built upon the principle of democratic centralization. These principles are:

(a) Election of the subordinate as well as the upper Party organs at general meetings of the Party members, conferences and conventions of the Party.

(b) Regular reporting of the Party committees to their constituents.

(c) Acceptance and carrying out of the decisions of the higher Party committees by the lower, strict Party discipline, and immediate and exact applications of the decisions of the Executive Committee of the Communist International and of the Central Committee of the Party.

(d) Any Party committee whose activities extend over a certain area is considered superior to those Party organizations whose activity is limited only to certain parts of this area.

[fol. 13-95] (e) The discussion on basic Party questions or general Party lines can be carried on by the members only until the Central Committee has decided them. After a decision has been adopted at the congress of the Comintern, the Party convention, or by the leading Party com-

mittee, it must be carried out unconditionally, even if some of the members or some of the local organizations are not in agreement with the decision.

"2. The highest authority of each unit of the Party is the general meeting of Party members, conference or Party convention.

"3. The membership meeting, conference or Party convention elects the leading committee which acts as the leading Party organ in the interim between the membership meetings, conferences or conventions and conducts the work of the Party organization.

§ 5—The Party Nucleus

"1. The basis of the Party organization is the nucleus (in factories, mines, shops, etc.) which all Party members working in these places must join. The nucleus consists of at least three members. Newly organized nuclei must be endorsed by the leading committee of the section in which the shop nuclei are organized.

"3. Party members who cannot be immediately affiliated with a shop nucleus shall join temporarily the street nucleus in the section of the city in which they reside, until it shall be possible to create a shop nucleus in the factory.

§ 12—Party Discipline

"1. The strictest Party Discipline is the most solemn duty of all Party members and all Party organizations. The decisions of the CI and the Party Convention of the CC and of all leading committees of the Party, must be promptly carried out. Discussion of questions over which there have been differences must not continue after the decision has been made.

§ 13—Party Dues

"1. Each applicant for membership shall pay an initiation fee of 50¢ (Unemployed 10¢), which shall be receipted [fol. 13-96] for by an Initiation Stamp furnished by the CC. Fifty per cent of the sum of the Initiation Stamp shall go to the National Office and 50% to the District Office.

"2. Each member shall pay dues weekly approximating 2% of his earnings, which shall be receipted for by dues stamps issued by the Central Committee. Dues Stamps shall be issued in five categories, as follows:

"All members receiving $15 per week wages or less (including housewives and working farmers) pay 10¢ dues weekly.

Over $15 and up to $25 per week wages shall pay 25¢ dues weekly.

Over $25 and up to $30 per week wages shall pay 50¢ dues weekly.

Over $30 and up to $40 per week wages shall pay 75¢ dues weekly.

Over $40 and up to $50 per week wages shall pay $1.00 dues weekly.

Members receiving over $50 per week wages, shall pay in addition to the regular $1.00 per week dues, additional dues (special tax) at the rate of 50¢ for each $5.00 (or fraction) of their weekly earnings above $50.00.

"3. The district organization shall purchase all dues stamps at 50% retail price; the district shall sell at 80% retail price to Sections; and the Sections shall sell them at 90% retail price to units.

"4. All local or district assessments or collections are prohibited except by special permission of the Polcom. Special assessments may be levied by the national convention or the CC. No member shall be considered in good standing unless he purchases such special assessment stamps.

"5. Members unable to pay regular dues on account of unemployment, strikes, illness or similar reason, shall pay 2 cents per week.

"6. Members who are four weeks in arrears in payment of dues cease to be members of the Party in good standing. Members who are three months in arrears shall be stricken from the rolls. No member of the Party shall pay dues in advance for a period of more than six weeks.

[fol. 13-97] "What is the Communist Party?

"The Party is the vanguard of the working class and consists of the best, most class conscious, most active, the

most courageous members of that class. It incorporates the whole body of experience of the proletarian struggle, basing itself upon the revolutionary theory of Marxism and representing the general and lasting interests of the whole of the working class, the Party personifies the unity of proletarian principles, of proletarian will and of proletarian revolutionary action. (From the program of the Communist International.)

"We are the Party of the working class. Consequently, nearly the whole of that class (in time of war and civil war, the whole of that class) should work under the guidance of our Party, should create the closest contacts with our Party. (Lenin.)

"On Discipline

"He who weakens, no matter how little, the iron discipline of the Party of the proletariat (especially during the period of dictatorship), effectually helps the bourgeoisie against the proletariat. (Lenin.)

"The Party as the best training school for working class leaders, is the only organization competent, in virtue of its experience and authority to centralize the leadership of the proletarian struggle, and thus to transform all non-Party working class organizations into accessory organs and connecting belts linking up the Party with the working class as a whole. (Lenin.)"

The above described book also contains four pages with places blocked off for stamps, these pages being headed: "Membership Dues for 1932. The book also contains four pages blank except for the heading: "Assessment Stamps." The book also contains two pages headed: "Transfers" with blank places to enter: "Granted from——" and "Accepted to——."

Document No. 4

Membership Book No. 51069 of the Communist Party of the U. S. A., being a booklet of 16 pages, with printing therein the same as Document No. 3, except the first page, which is as follows:

[fol. 13-98] "Communist Party of the U. S. A.

(Section of the Communist International)

Membership Book No. 51069

for

Name: A. O. Leathers.
Date Admitted to Communist Party: 7/10/32.
Entered Revolutionary Movement: ——.
District 17, City Atlanta.
Section 2. Shop or Street Nucleus ——.
Signature of Member (~~in ink~~): —— ——.
This book was issued on (date): 7/10/32.
Nat Ross. (Signature of District Organizer and Party Seal.)

No Party Membership Book valid unless it has party seal stamped on.

Issued by the Central Committee, C. P. U. S. A.

(Stamp is affixed, which reads as follows: "Unemployment Initiation Communist Party of the U. S. A. 10¢ Stamp 10¢.)

Document No. 5

Membership Book No. 51092, being 16 pages, same as Documents No. 3 and 4, except that it is made out in the name: Nannie Leah Young.

Document No. 6

Membership Book No. 51093, being 16 pages, same as Documents No. 3 and 4, except that it is made in name: Wm. Harris Leathers.

Document No. 7

Membership Book No. 51090, being 16 pages, same as Documents No. 3 and 4, except that it is made in name: Mary Heed.

Document No. 8

Membership Book No. 52648, being 16 pages, same as Documents No. 3 and 4, except that it is made in name: Anna Mae Leathers.

Document No. 9

Membership Book No. 51089, being 16 pages, same as Documents No. 3 and 4, except that it is made in name: L. B. Benefield.

Document No. 10

Membership Book No. 51091, being 16 pages, same as Documents No. 3 and 4, except that it is made in name: Willie Wyatt.

[fol. 13-99] Document No. 11

Membership Book No. 27168, being 16 pages, the printed part of which is the same as Documents No. 3 and 4, but the first page of which is as follows:

"Duplicate

Communist Party of the U. S. A.

(Section of the Communist International)

Membership Book No. 27168

for

Name: Otto Hall.
Date Admitted to Communist Party: March, 1921.
Entered Revolutionary Movement: 1920.
District 5, City, Covesdale.
Section Cove. Shop or Street Nucleus ——.
Signature of Member (in ink): —— ——.
This Book was issued on (date) Duplicate.
Carl Price. (Signature of District Organizer and Party Seal.)

No Party Membership Book valid unless it has Party Seal stamped on.
Issued by the Central Committee, C. P. U. S. A.

(Rubber-stamp seal and symbol is imposed thereon, in red ink, part of the seal being illegible, but which is partly legible as follows: "Communist Party U. S. A.")

On two of the pages headed "Membership Dues", in this book, twelve yellow stamps have been fixed, reading:

"Exempt Stamp, Communist Party of the U. S. A." On the first page headed "Transfers", in this book, appears an entry:

"Granted from Pittsburgh, District 5.
"Accepted to: Dist. 2, New York."

Document No. 12

Three pads of certificates of contribution to the Communist Party presidential election campaign fund, with stub attached to each certificate, a sample of said certificates and stubs being as follows:

[fol. 13-100] (Here follows photolithograph of Certificate, side folio 13-100A)

Each of the pads contain 42 such certificates, similar to the above except as to the amount in large red figures in the center. Some of the certificates are for $5, some $1, some 50¢ and some 25¢. The reverse side of all said certificates is as follows:

Send this slip with the money to the one that gave you this book.

Received $ _____ from

Name _____

Street _____

City _____ State _____

for the $100,000.00
Communist Election Campaign Fund

Book No. 1990

Received by _____

No. 1990

FOR WORKING CLASS UNITY IN THE ELECTION CAMPAIGN! AGAINST THE HUNGER AND WAR OFFENSIVE OF THE CAPITALISTS!

FOR PRESIDENT

Wm. Z. FOSTER

COMMUNIST ELECTION FUND CERTIFICATE

This is to certify that

5.00

has contributed the face value of this certificate to the election campaign fund of the Communist Party of the U.S.A.

Wm Z Foster

James W. Ford

FOR VICE PRESIDENT

JAMES W. FORD

FOR THE WORKERS TICKET - CANDIDATES OF THE COMMUNIST PARTY - - AGAINST THE CANDIDATES OF THE BOSSES!

(Reverse)

[fol. 13-101] The outside of each of said pads, in Red paper, is as follows:

"Vote Communist and Support the $100,000.00 Communist Election Campaign Fund

"Vote Communist for

1. Unemployment and Social Insurance at the expense of the State and employers.

2. Against Hoover's wage-cutting policy.

3. Emergency relief for the poor farmers without restrictions by the government and banks; exemption of poor farmers from taxes and from forced collection of rents or debts.

4. Equal rights for the Negroes and self-determination for the Black Belt.

5. Against capitalistic terror: against all forms of suppression of the political rights of the workers.

6. Against imperialist war; for the defense of the Chinese people and of the Soviet Union."

(Inside the Red cover appears the following:

"This book is valuable. A serious responsibility rests with you in accounting for the certificates contained in this $100,000 Communist Election Campaign book.

"For all money received by you, give a certificate, which is the official receipt to the contributor. Fill in the information required on each stub.

"Send the money with the stubs to the place from which you received this book. It is very important to do this promptly because we want to publish the names of all contributors in the Daily Worker."

On the back of each of said pads, in Red paper, is the following:)

"Every Worker a Communist Campaigner

Collect Everywhere

"Every dollar collected is a bullet fired into the boss class. The success of this campaign depends upon your efforts. Read and Subscribe to the Daily Worker."

[fol. 13-102] Document No. 13

A booklet entitled: "The Communist Position on the Negro Question."

On the outside cover, in addition to above title, appears a map of the United States of America, under which is the following:

"Self-Determination for the Black Belt"

The map has a dark belt or strip appearing in it, beginning with a portion of Arkansas and Louisiana and extending eastward through the middle of Mississippi, Alabama and Georgia. Inside the State of Georgia this "Black Belt" includes a strip from west to east, the counties within the belt on the northern edge being Troup, Coweta, Fayette, Campbell (old) Clayton, Rockdale, Newton, Morgan, Clarke, Oglethorpe and Elbert. From this tier of counties the Belt extends southward through the middle of Georgia to and including the counties of Dooly, Wilcox, Dodge, Laurens and Johnson.

Leaving Georgia northeastward, the "Black Belt" extends through a substantial portion of South Carolina, North Carolina and Virginia, ending at the Chesapeake Bay.

A photographic reproduction of said map and booklet cover is as follows:

(Here follows photolithograph of side folio 13-102A)

THE SOUTH ON THE NEGRO QUESTION

EQUAL RIGHTS FOR NEGROES

SELF-DETERMINATION FOR THE BLACK BELT

[fol. 13-103] On page 28 of this pamphlet appears the following:

"Our Demands in the South

"In the South, the first must be fearlessly developed against the thievery and robbery of the Southern capitalists and landlords; against their whole system of enslaving the Negroes based on Jim-Crowism and lynch terror. We must fight there not merely against inequality, but against the whole system by which this inequality is enforced.

"In the first place, our demand is that the land of the Southern white landlords for years tilled by the Negro tenant farmers, be confiscated and turned over to the Negroes. This is the only way to insure economic and social equality for the tenant farmers.

"Secondly, we proposed to break up the present artificial state boundaries established for the convenience of the white master class, and to establish the state unity of the territory known as the 'Black Belt,' where the Negroes constitute the overwhelming majority of the population.

"Thirdly, in this territory, we demand that the Negroes be given the complete right of self-determination; the right to set up their own Government in this territory and the right to separate, if they wish, from the United States.

"Around these demands for the Negroes, as I have outlined them here—with the revolutionary white workers in the very forefront of the struggle—the unity of white workers, small farmers and the Negro masses can and must be established.

"Not Promises; But Action

"But the Negroes have listened to many promises. Every political faker has promises equality and freedom. The white workers can win the confidence of the negro masses, not by promises, but by action. We must ourselves be in the forefront of the struggle for negro rights. We must ourselves jump at the throat of the persecutors of the negroes. We white workers, in the first place, must enforce the demand—'Death to the Lynchers!'

"The Communist Party has demonstrated in action that it does not merely speak for Negro rights; it is everywhere in the forefront of the actual struggle to force the grant-

ing of real equality now for the negro people. This has [fol. 13-104] been shown in the Scottsboro case; it has been shown in hundreds of other cases in all sections of the country.

"Comrades, in conclusion, as a further step in convincing the masses of the revolutionary sincerity of the Communist Party in the fight for equality for the Negro people, I propose that we endorse as our candidate for Vice-President, a negro worker. I have a candidate to propose—a candidate long active in the revolutionary working class movement—an ex-serviceman, a member of the Trade Union Unity League, a member of the Communist Party. This candidate knows the lynchers. His own grandfather was lynched by the southern bosses. He has long been a most active fighter against the enslavement of his people.

"I wish to nominate for Vice-President of the United States, as our running mate with William Z. Foster, this leader in the struggle for the emancipation of the toilers—white and negro—James W. Ford of Alabama."

(The above is incorporated in the booklet as a part of the nominating speech of C. A. Hathaway, "delivered at the National Nominating Convention of the Communist Party proposing James W. Ford of Alabama for Vice-President of the United States.")

(On the first page of this booklet appears:)

"The documents presented in this pamphlet are the result of the very best and most careful thought, study and experience of our Party. The correct line of our Party on this question has been hammered out in years of bitter struggle—struggle with the enemies of Bolshevism. • • •

"But in the furious struggle against our enemies, and against the influence of these enemies upon our own ranks; with the indispensable guidance of the Communist International—our Party has hammered out its Bolshevik line on the negro question."

(Among the literature set forth in this booklet appears also the following:

"Resolution 3 of the Communist International on the Negro Question in the United States

1. Resolution of Communist International, October, 1930.

"1. The Communist Party of the United States has always acted openly and energetically against Negro oppres- [fol. 13-105] sion and has thereby won increasing sympathy among the Negro population. In its own ranks, too, the Party has relentlessly fought the slightest evidences of white chauvinism, and has purged itself of the gross opportunism of the Lovestonites. According to the assertions of these people, the 'industrial revolution' will sweep away the remnants of slavery in the agricultural South, and will proletarianize the negro peasantry, so that the negro question, as a special national question, would thereby be presumably solved, or could be put off until the time of the socialist revolution in America. • • •

"Furthermore, it is necessary to face clearly the inevitable distinction between the position of the negro in the South and in the North, owing to the fact that at least three-fourths of the entire negro population of the United States (12,000,000) live in compact masses in the South, most of them being peasants and agricultural laborers in a state of semi-serfdom, settled in the 'Black Belt' and constituting the majority of the population, whereas the negroes in the northern states are for the most part industrial workers of the lowest categories who have recently come to the various industrial centers from the South (having often even fled from there).

"The struggle of the Communists for the equal rights of the negroes applies to all negroes, in the North as well as in the South. The struggle for this slogan embraces all or almost all of the important special interests of the negroes in the North, but not in the South, where the main Communist slogan must be: The right of self-determination of the negroes in the black belt.

These two slogans, however, are most closely connected. The negroes in the North are very much interested in winning the right of self-determination of the Negro population of the Black Belt and can thereby hope for strong support for the establishment of true equality of the Negroes in the North. In the South the Negroes are suffer-

ing no less, but still more than in the North from the glaring lack of all equality; for the most part the struggle for their most urgent partial demands in the Black Belt is nothing more than the struggle for their equal rights, and only the fulfillment of their main slogan, the right of self-determination in the Black Belt, can assure them of true equality. . . .

[fol. 13-106] "It is the special duty of the revolutionary Negro Workers to carry on tireless activity among the Negro working masses to free them of their distrust of the white proletariat and draw them into the common front of the revolutionary class struggle against the bourgeoisie . . .

"The slogan of the right of self-determination occupies the central place in the liberation struggle of the Negro population in the Black Belt against the yoke of American imperialism. But this slogan, as we see it, must be carried out only in connection with two other basic demands. Thus, there are three basic demands to be kept in mind in the Black Belt, namely, the following:

(a) Confiscation of the landed property of the white landowners and capitalists for the benefit of the negro farmers. The land property in the hands of the white American exploiters constitutes the most important material basis of the entire system of national oppression and serfdom of the Negroes in the Black Belt. More than three-quarters of all Negro farmers here are bound in actual serfdom to the farms and plantations of the white exploiters by the feudal system of 'share cropping.' Only on paper and not in practice are they freed from the yoke of their former slavery. The same holds completely true for the great mass of black contract laborers. Here the contract is only the capitalist expression of the chains of the old slavery, which even today are not infrequently applied in their natural iron form on the roads of the Black Belt (chain gang work). These are the main forms of present Negro slavery in the Black Belt, and no breaking of the chains of this slavery is possible without confiscating all the landed property of the white masters. Without this revolutionary measure, without the agrarian revolution, the right of self-determination of the Negro population would be only a Utopia or, at best, would remain only on paper without changing in any way the actual enslavement.

(b) Establishment of the State Unity of the Black Belt. At the present time this Negro zone—precisely for the purpose of facilitating national oppression—is artificially split up and divided into a number of various states which include distant localities having a majority of white population. If the right of self-determination of the Negroes is to be put into force, it is necessary wherever possible to bring together into one governmental unit all districts of [fol. 13-107] the South where the majority of the settled population consists of negroes. Within the limits of this state there will of course remain a fairly significant white minority which must submit to the right of self-determination of the negro majority. There is no other possible way of carrying out in a democratic manner the right of self-determination of the negroes. Every plan regarding the establishment of the negro state with an exclusively negro population in America (and of course still more exporting it to Africa) is nothing but an unreal and reactionary caricature of the fulfillment of the right of self-determination of the negroes, and every attempt to isolate and transport the negroes would have the most damaging effect upon their interests. Above all, it would violate the right of the negro farmers in the Black Belt not only to their present residences and their land, but also to the land owned by the white landlords and cultivated by negro labor.

(c) Right of Self-Determination. This means complete and unlimited right of the negro majority to exercise governmental authority in the entire territory of the Black Belt, as well as to decide upon the relations between their territory and other nations, particularly the United States. It would not be right of self-determination in our sense of the word if the negroes in the Black Belt had the right of self-determination only in cases which concerned exclusively the negroes and did not affect the whites, because the most important cases arising here are bound to affect the whites as well as negroes. First of all, true right to self-determination means that the negro majority and not the white minority in the entire territory of the administratively united Black Belt exercises the right of administering governmental, legislative, and judicial authority. At the present time all this power is concentrated in the hands of the white bourgeoisie and landlords. It is they

who appoint all officials, it is they who dispose of public property, it is they who determine the taxes, it is they who govern and make the laws. Therefore, the overthrow of this class rule in the Black Belt is unconditionally necessary in the struggle for the negroes' right to self-determination. This, however, means at the same time the overflow of the yoke of American imperialism in the Black Belt on which the forces of the local white bourgeoisie depend. Only in this way, only if the negro population of the Black [fol. 13-108] Belt wins its freedom from American imperialism even to the point of deciding itself the relations between its country and other governments, especially the United States, will it win real and complete self-determination. One should demand from the beginning that no armed forces of American imperialism should remain on the territory of the Black Belt.

7. As stated in the letter of the Political Secretariat of the E. C. C. I. of March 16, 1930, the Communists must 'unreservedly carry on a struggle' for the self-determination of the negro population in the Black Belt in accordance with what has been set forth above. It is incorrect and harmful to interpret the Communist standpoint to mean that the Communists stand for the right of self-determination of the negroes only up to a certain point but not beyond this, to, for example, the right of separation. It is also incorrect to say that the Communists are only to carry on propaganda or agitation for the right of self-determination, but not to develop any activity to bring this about. No, it is of the utmost importance for the Communist Party to reject any such limitation of its struggle for this slogan. Even if the situation does not yet warrant the raising of the question of uprising, one should not limit oneself at present to propaganda for the demand, 'Right to Self-Determination,' but should organize mass actions, such as demonstrations, strikes, tax boycott movements, etc.

"It would be a mistake to imagine that the 'right of self-determination' slogan is a truly revolutionary slogan only in connection with the demand for complete separation. The question of power is decided not only through the demand of separation, but just as much through the demand of the right to decide the separation question and self-determination in general. A direct question of power is also the demand of confiscation of the land of the white exploit-

ers in the South, as well as the demand of the negroes that the entire Black Belt be amalgamated into a State unit.

Hereby, every single fundamental demand of the liberation struggle of the negroes in the Black Belt is such that—if once thoroughly understood by the negro masses and adopted as their slogan—it will lead them into the struggle for the overthrow of the power of the ruling bourgeoisie, which is impossible without such revolutionary struggle. [fol. 13-109] One cannot deny that it is just possible for the negro population of the Black Belt to win the right to self-determination during capitalism; but it is perfectly clear and indubitable that this is possible only through successful revolutionary struggle for power against the American bourgeoisie, through wresting the negroes' right of self-determination from American imperialism. Thus, the slogan of right to self-determination is a real slogan of National Rebellion which, to be considered as such, need not be supplemented by proclaiming struggle for the complete separation of the negro zone, at least not at present.

(d) Communists must fight in the forefront of the national liberation movement and must do their utmost for the progress of this mass movement and its revolutionization. Negro Communists must clearly dissociate themselves from all bourgeois currents in the negro movement, must indefatigably oppose the spread of the influence of the bourgeois groups on the working negroes. • • •

(e) One must work with the utmost energy for the establishment and consolidation of Communist Party organizations and revolutionary trade unions in the South. • • •

11. It is particularly incumbent on negro Communists to criticize consistently half-heartedness and hesitations of the petty-bourgeois national-revolutionary negro leaders in the liberation struggle of the Black Belt, exposing them before the masses. • • • Simultaneously, negro Communists must carry on among the negro masses an energetic struggle against nationalist moods directed indiscriminately against all whites, workers as well as capitalists, Communists as well as imperialists. Their constant call to the negro masses must be: Revolutionary struggle against the ruling white bourgeoisie, through a fighting alliance with the revolutionary white proletariat!"

(In another portion of said Booklet, "The Communist position on the negro question" appears an article by Harry Haywood, entitled: "The Theoretical Defenders of White Chauvinism in the Labor Movement", reprinted from "The Communist" for June, 1931. A portion of this article is as follows:)

"The correctness of the program of the Communist International on the Negro Question is conclusively proven in [fol. 13-110] the present crisis by the response of the negro masses to the slogans of the Party, and by their increasing participation together with the white workers in joint struggles against the capitalist offensive. It is likewise proven by the vicious repressive measures of the ruling classes against the activities of the Communist Party and other revolutionary organization among negroes.

"It is not surprising, therefore, that the revolutionary program of the Communist Party is meeting the sharpest attacks, particularly at the present time, on the part of all chauvinist forces from the Fish Committee down to the Lovestone renegades. • • •

"But the white revolutionary workers, who understand the powerful revolutionary potentialities inherent in the struggle of the negro masses, would answer in the following manner: 'This land on which you and your ancestors have slaved for centuries rightfully belongs to you. The bosses' government in this territory is a government of foreign slave-drivers; it is our enemy as well as yours. We recognize and support your right to organize your own government, to elect your officials, to organize your own militia, and your unqualified right to separate from the United States. Moreover, we, the white revolutionary workers, will prove our sincerity right now, at the present time by actively supporting and helping to organize a struggle to bring about those conditions in which you will be able to exercise your right to self-determination.' "

(In another portion of said Booklet appears an article by Earl Browder entitled: "For National Liberation of the Negroes! War against White Chauvinism!" being labeled "Extract from a report on behalf of the Central Committee, Communist Party of U. S. A. on the subject of the struggle for Negro rights in connection with the relation between white and negro students in the school.")

"Comrades: I have purposely refrained from preparing a formal report, my purpose being to give the views of the Central Committee as informally as possible. • • •

"Among the political advances of our Party during 1931, the most decisive was precisely in the struggle for negro rights. In what did these victories consist? In this, that the Party raised concretely the issues of negro rights on the basis of the Leninist program on the national question, [fol. 13-111] and aroused masses of negroes and also of whites, to struggle upon these concrete issues. The masses have responded to our program, and in the struggle there has begun a sharp class differentiation among the negroes.

"Our Party for many years has raised the slogan of struggle for negro rights. Why have we only now begun to arouse mass struggles? There are objective and subjective reasons for this. First, the results of the crisis, which fall heaviest upon the negro masses, including the sharpening repression and lynch terror. The second includes primarily the improved work of our Party, based upon clarification of its political line and its concretization in immediate issues and daily struggles. • • •

"The purpose of our work on the negro question is to establish unity of white and black proletariat in a common struggle to overthrow capitalism, and the leadership of the proletariat over the negro masses in the struggle for their national liberation. • • •

"We are Bolsheviks, members of a fighting Party of the working class, who know that the only road to the revolutionary overthrow of capitalism and the establishment of Communism is through welding together the iron unity of class idealogy which penetrates into our ranks, as the prerequisite to the effective struggle against the class enemy physically. • • • "

Document No. 14

The July, 1932, issue of "The Communists", labeled "A Magazine of the Theory and Practice of Marxism-Leninism", published monthly by the Communist Party of the United States of America." The contents of said magazine are the following articles:

"Concretize and Strengthen the Anti-War Struggle" ..... Editorial
"Place the Party on a War Footing" By Earl Browder

Contradictions Among the Imperialists and Conflicts on the Pacific Coast	By N. Terentyev
Yankee Imperialist Intervention against the Chinese Revolution	By M. James
The Revolutionary Example of the Japanese Toilers	By Kumamoto
Will Imperialist War bring back Prosperity?	By Robt. W. Dunn
[fol. 13-112] The Philippine Islands in the War Area	By William Simons
The Struggle against the Provocateur The Defense of the Fatherland	By V. I. Lenin"

(The first article, editorial, contains the following:)

"The capitalist class of the United States finds itself at the present time in the process of 'growing into' a new world war, into the war against the Soviet Union. Already at the XVII Conference of the Communist Party of the Soviet Union, Comrade Moletov has pointed out that the peculiar characteristic of the present situation is the fact that the ruling classes, actively supported by the social-fascist leaders, are applying the tactic of 'peacefully growing into' war. It is this peculiar tactic, followed by world capitalism under the screen of the most intense pacifist maneuvers, that we must concentrate on exposing before the masses in order to bring about a more determined and concrete struggle against the imperialist war and for the *defense of the Soviet Union.*"

"Infinitely more attention must be paid to development of the mass struggles for negro rights. Our main weakness here still remains the insufficient following out of the policy of unfolding daily struggles against negro discrimination and oppression, especially against lynchings, and the drawing of white workers together with the negroes into the fight. And in close connection with this decisive activity we must broadly unfold the full negro program of the Party exposing the social fascists (Thomas' opposition to self-determination and his threat of 'race riots') and the negro reformists.

Document No. 15

A book of 247 pages, entitled: "Communism and Christianism", "Analyzed and contrasted from the Marxian and

Darwinian points of view." By Rt. Rev. William Montgomery Brown, D. D., Episcopus in partibus Bolshevikium et Infidelium.

(See extracts from this book, 3 pages forward.)

Document No. 16

A four-page leaflet entitled: "An Appeal to Southern Young Workers," part of which is as follows:

"The Young Communist League is the champion not only of the young white workers but especially of the doubly [fol. 13-113] oppressed negro young workers. The Young Communist League fights against the whole system of race discrimination and stands for full racial, political, economic and social equality of all workers.

"The chief aim of the Young Communist League is to organize the young workers for a struggle against the bosses and against the whole profit system.

"The Young Communist League is a section of the Young Communist International, the revolutionary leader of the young workers the world over and accepts the guidance of the Communist Party of America.

"The Young Communist League fights for:

1. At least $20.00 weekly wage for all young workers.

2. A six hour day for all young workers under 18.

3. 4 weeks' vacation with pay for all young workers.

4. Two 15 minute rest period every day. Against the speed-up system.

5. No child labor under 14. The State to support all those now employed under that age.

6. Equal pay for equal work.

7. Full political, social and racial equality for the negro workers.

8. Against bosses' wars! Defend the Soviet Union!

9. Smash the National Guard, the C. M. T. C. and R. O. T. C.

10. For the right of all workers to defend themselves, their union, their right to organize, free speech.

11. Freedom of the Gastonia prisoners and all other class prisoners.

12. For A workers and farmers Government in the United States.

Young Workers! Join the Young Communist League."

Document No. 17

A 64-page booklet entitled: "Party Organizer", Special Plenum issue, May-June, 1932. Issue by Central Committee, Communist Party, U. S. A., containing a number of articles on the Communist Party and what it advocates, and particularly how to organize workers into "cadres."

Document No. 18

A book of 126 pages entitled: "The Life and Struggles of Negro Toilers," by George Padmore. Published by the [fol. 13-114] R. I. L. U. Magazine for the International Trade Union Committee of Negro Workers.

Following are the contents of this book, by chapters:

Chapter I. Oppression of Negro Toilers (Africa).
Chapter II. Black Slaves in the New World.
Chapter III. Under the Yoke of Yankee Imperialism.
Chapter IV. The Awakening of Negro Toilers.
Chapter V. Black Soldiers of Imperialism.
Chapter VI. Revolutionary Perspectives.

(Extracts from Chapter II, (page 46) are as follows:)

"Therefore, unlike their black brother in Africa, the Negroes of the New World have had centuries of contact with the white capitalist civilization. But like the negroes in Africa, they are subjected to the same barbarous methods of imperialist plunder and exploitation. • • • In no other so-called civilized country in the world are human beings treated as badly as these 15 million negroes. They live under a perpetual regime of white terror, which expresses itself in lynchings, peonage, racial segregation and other pronounced forms of white chauvinism. • • • They are absolutely at the mercy of every fiendish mob incited by the white landlords and capitalists. Bands of business and professional men make periodical raids upon the black countryside, where they lynch negroes, burn homes

and destroy the crops and other property belonging to the blacks. In most cases of lynching the negroes are burned to death after their bodies have been soaked in gasoline, while others are hanged from trees. On these occasions the entire white community turned out to witness the bloody spectacles, which were made 'Roman Holidays'."

On page 48 of this book it is charged that white people "invade the sections where the negroes live, burn homes and crops, kill off live stock, poison drinking wells, murder and lynch unarmed men, women and children who dare to offer resistance to their programs."

(Following are some quotations from the book, "Communism and Christianism", which is listed, supra, as Document No. 15:)

"Banish the Gods from the Skies and Capitalists from the Earth and make the World safe for Industrial Communism."

[fol. 13-115] "As the machinery of capitalist government, including the armed forces of the nation, conserves the monopoly by the capitalist class of the wealth taken from the workers, the working class must organize consciously and politically for acquiring the powers of government, national and local, in order that this machinery, including these forces, may be converted from an instrument of oppression into the agent of emancipation and the overthrow of privilege, aristocratic and plutocratic.

"The trouble with every reformatory socialism of modern times is, that it undertakes the impossibility of changing the fruit of the capitalist state into that of the communistic one, without changing the political organism; but to do that is as impossible as to gather grapes from thorns or figs from thistles. Hence an uprooting and replanting are necessary (a revolution not a reformation) which will give the world a new tree of state.

"Capitalism no longer grows the fruits (foods, clothes and houses) which are necessary to the sustenance of all the world. Hence it must be dug up by the roots in order that a tree which is so organized that it will bear these necessities for the whole world may be planted in its place.

"The people of Russia have accomplished this uprooting and replanting (this revolution) in the case of their state, and those of every nation are destined to do the same in

one way or another, each according to its historical and economic development, some with much violence, most, I hope, with but little."

Document No. 19

A sixty-page book of receipts for money for the Communist Election Campaign Fund, the following being a sample page:

[fol. 13-116] (Here follows photolithograph of page of receipt book, side folio 13-116A)

BROUGHT FORWARD

No. 2286

$100,000.00 Communist Election Campaign Fund
P. O. Box 87, Station D, New York, N. Y.

District Section Org. Press City State

Received from

Address

1932 Received by

No. 2287

$100,000.00 Communist Election Campaign Fund
P. O. Box 87, Station D, New York, N. Y.

District Section Org. Press City State

Received from

Address

1932 Received by

No. 2288

$100,000.00 Communist Election Campaign Fund
P. O. Box 87, Station D, New York, N. Y.

District Section Org. Press City State

Received from

Address

1932 Received by

No. 2289

$100,000.00 Communist Election Campaign Fund
P. O. Box 87, Station D, New York, N. Y.

District Section Org. Press City State

Received from

Address

1932 Received by

No. 2290

$100,000.00 Communist Election Campaign Fund
P. O. Box 87, Station D, New York, N. Y.

District Section Org. Press City State

Received from

Address

1932 Received by

CARRIED FORWARD

13-116A

74A

[fol. 13-117] Document No. 20

A sheet of "minutes" (typewritten) as follows:

"Minutes of the Section Committee

July 10, 1932

"Members present, 4; Absent, 2.

Comrade H, reported in detail on the DB meeting. Main points of BD meeting August 1st, Birmingham, etc. For Atlanta nothing definite laid out for this section, only proposals of work was agreed on by the DB. In organizing our unemployed groups we can get a lot of experience from the way the comrades there are doing in organizing their unemployed groups (Capitans and sub Capitans in the different wards, Capitans have meeting- weekly together map out plan of work for the whole ward). On August first, it will depend upon our success to break thru on the issue of demanding unemployment relief, etc. Comrades F., L, and others to go to Mayor and ask for permit for vacant place for the unemployed to meet and discuss their problems. This unemployed meeting will be a perliminary for August first. Organize special day for distribution of the 750 copies of the Daily's that we will get for our section. All CP Members to be on *the* duty at the August first meeting and the unemployed meetings too. They are to get as many contacts as they can with unemployed workers to start groups in their neighborhoods, and the results shouldn't be like it was at our demonstration. Comrades H, and H, K, and Houseworth to meet with ILD, take up policy of work with them of developing local struggles to popularize the Scottsboro case more effectifully among the White workers and the negro workers as well, to visit all Churches possible to raise funds for the defense. By pointing out to the White workers, that they are being framed up as well as the negro and on these basis we will be able to get more white workers to support the Scottsboro campaign. Also two white comrades must be assigned to the ILD group and attend meetings regular. Comrade F, will be unit org. of unit 12, H, to attend unit 12, meeting, Hern, to meet unit 11."

Docket No. 21

A note-book containing penciled "minutes" and notes as follows:

"The Ford & Foster Club met on Friday night July 1, and Miss King was the first speaker.

[fol. 13-118] 2 and carmade Hall next he read a pece in the Atlanta Georgian that they was 6,000 dollars raze for the unployed releaf after the Demestrahun at the Cort house on thirday morning.

3 three join at the last meeting and it was moved in second the each carmade will pay 5¢ dues a week

4 and it was all so moved in second that carmade Russell will be our treager

5 it was all so moved in second that carmade Walker Carmade Lula turner Carmade Josiephine Bullock on the Orzashoion committie.

6 then the meeting rejurn.

"Ford and Foster Club, Friday night meeting July 10.

The election of delagate to the state convanism here in Atlanta Ga Carmade King spoke on the relaf for the workers She all so spoke on the demand that all the prison that are on the changan shall be relested and it was moved in second.

Mr. Whitaker, head of Community chest!

All so Carmade Hall left it up to us to demand for that 6,000 dollars that has ben razed for the unployd

It was discushed betwen all the Comrade that the demand for the release of 6,000 in cash money

It was all so moved in second that we all so demand a turn ½ of cold to each famley for this wenter

Carmade Walker reported that he was to orzinize to clubs one on east side and one on the north side

It was all so moved in second that the school chirldren will get cloth and car fair from the city realf

Next Carmade Montgomery Carmade Edd Grove Carmade Russell Carmade Walker are the Delagate to the State convanison here in Atlanta Ga. three new members

Document No. 22

Postoffice box rent receipt, as follows:

"No. 1039 Post Office Atlanta, Ga.
Sept. 29, 1931.

M- James Dix.

To Rent of Box No. 339 for Quarter Ending Dec. 31, 1931, $2.00.

Received payment, Edw. K. Large, Postmaster.
J. M. C.

[fol. 13-119] Document No. 23

Postoffice box rent receipt, as follows:

"No. 798. Post Office, Atlanta, Georgia,
Dec. 30, 1931.

Mr. James Dix.

To Rent of Box No. 339 for Quarter Ending Mar. 31, 1932, $2.00.

Received payment, Edw. K. Large, P. M. J. M. C.

Document No. 24

Postoffice box rent receipt, as follows:

"No. 1201. Post Office, Atlanta, Georgia,
Mar. 31, 1932.

M- James Dix.

To Rent of Box No. 339 for Quarter Ending June 30, 1932, $2.00.

Received payment, Edw. K. Large, P. M. J. M. C.

Document No. 25

Postoffice box rent receipt, as follows:

"No. 155. Post Office, Atlanta, Georgia,
Jul. 5, 1932.

M- James Dix.

To Rent of Box No. 339 for Quarter ending Sept. 30, 1932, $2.00.

Received payment, Edw. K. Large, P. M. J. M. C.

Document No. 26

Typewritten "minutes" as follows:

"Minutes of the Foster & Ford Clubs

July 8, 1932

Club No. 3. The meeting started at 830 o'clock. Comrad King gave a detail report on the election campaign and the tasks the clubs should carry out in the election work. The floor was then open for the election of delegates to the state convention to be held in Atlanta pretty soon, and the following comrades was elected: Comrad Montgomery, Comrade Russell, Comrade Walker, Comrade Grove. The delegates are to be notified a couple of days ahead of time for the convention. Comrade King also went in detail on the question of the demands that we should be willing to fight for, the demands are as follows: For the [fol. 13-120] release of all workers arrested and framed up on vagrancy and that this vagrancy law be did away with completely. (2) That each unemployed workers should get $4.00 a week no matter how small their family but in the case of a larger family the amount should be enough to provide for all of them if there are 12 in a family they should get $12.00 a week and so on: (3) There should not be any form of discrimination in the distribution of this relief, against negro workers mainly, and other workers who do not have familys etc. (4) Half of this amount to be in the form of cash money and the other half will be in scrip, for instance if one family get six dollars, half of this should be cash and the other scrip. (5) That City and the County begin to get ready now to provide 1 ton and a half for all unemployed workers for this winter starting with September first and ending the latter part of April. (6) That the City and County officials and their government provide free shoe clothing, and car fare for the childrens of the unemployed workers of Atlanta. Comrade Walker reported that he was going to organize clubs on the east side and the North side and other places where he no workers. The meeting adjourned at 10 o'clock.

"Comrade K, to write center on the question of the composition of the Candidates in the election since there has been some confusion on this question. Also to prepare draft

leaflet for state convention. All election clubs to elect delegates at their next meetings to the city central committee of the election campaign. Comrade Housew, to take care of the ILD meeting Tuesday, and take up special points with them.

Section Committee of Atlanta, Georgia, Box 339, Post Office.

Document No. 27

Plain envelope addressed: "Angelo Herndon, Box 339, City" containing two red cards: Application for Membership in Communist Party of the U. S. A., as follows:

(Here follows photolithograph of Application for Membership, side folio 13-120A)

8

COMMUNIST PARTY of the U. S. A.

Application for Membership

The undersigned declares his adherence to the program and statutes of the Communist International and the Communist Party of the U. S. A. and agrees to submit to the discipline of the Party and to engage actively in its work.

.....
(Signature of applicant)

Proposed by (1).....

(2).....

NOTE: An application fee of 50 cents (for unemployed 10c) must accompany the card. The space below to be filled out by the Nucleus Secretary.

Date proposed .....Date Accepted .....

District ..... City .... Sec. .....Unit .....

.....
(Signature of Nucleus Secretary)

Assigned to .....

See other side.

13 -120A

[fol. 13-121] Document No. 28

Copy of the "Daily Worker", a newspaper, labelled "Central Organ of the Communist Party, U. S. A.", issue of July 8, 1932, containing various news articles and editorials, among them being an article issued by "Central Committee, C. P. U. S. A." saying in part as follows:

"The Communist Party fights for peace, fights against imperialist war, fights for the defense of the only workers' republic in the world—The Soviet Union. • • •

"The Communist Party is the only party which fights for equal rights for the negro people. It is the only party which fights for the right of the negro people to govern in the 'Black Belt'." • • •

"Every penny you contribute will aid the Communist Party and the Daily Worker bring the program of the revolutionary workingclass to every nook and corner of the United States."

The title lines of this newspaper, with the six planks of the Communist Party published at the top of the page, are as follows:

[fol. 13-122] (Here follows photolithographs of side folios. 13-122A, 13-122B and 13-122C)

Daily Worker

Central Organ of the Communist Party U.S.A.

(Section of the Communist International)

VOTE COMMUNIST FOR

1. Unemployment and Social Insurance at the expense of the state and employers.
2. Against Hoover's wage-cutting policy.
3. Emergency relief for the poor farmers without restrictions by the government and banks; exemption of poor farmers from taxes, and no forced collection of rents or debts.

VOTE COMMUNIST FOR

4. Equal rights for the Negroes and self-determination for the Black Belt.
5. Against capitalist terror; against all forms of suppression of the political rights of workers.
6. Against imperialist war; for the defense of the Chinese people and of the Soviet Union.

13-1224 83A

"Everything Is Peaches Down in Georgia"

By OTTO HALL

FOR "Tin Pan Alley" song writer, who wrote this song, should look at Georgia today. He would certainly find that things are a long way from being "peaches" down there now, and that they never were—for the majority of the toiling population of this state, Negro or white. The gentleman who wrote this song is typical of the "inspired" capitalist song writers of the day. He probably has been about as far South as the "Battery," and is therefore well qualified to write these songs that glorify capitalist America.

If the workers and poor farmers in the North are in this third year of the crisis, suffering and have had their living standards reduced to the starvation level, the condition of the toilers in this section is one hundred fold worse. Particularly is this true in the state of Georgia. Negro and white tenant farmers, unable to live any longer on the farms, are picking up their few belongings (if they happen to have any) and flocking to the cities, thus adding to the ever-growing number of unemployed in the urban centers. The so-called independent small farm owners are having their farms taken away from them by the mortgage bankers for back debts, and by the state for inability to keep up their taxes.

The Hoover Farm Board has given these farmers some left-handed help by buying thousands of sacks of flour and shipping it to the big plantation owners and mortgage bankers in the towns, who pay the freight on this flour and store it in their granaries and sell it at high prices to the poor farmers and Negro share-croppers, in spite of the fact that each sack is plainly marked "not to be sold." There are hundreds of abandoned farms in this state, where the farmers have been forced to leave and their farms taken over by the bankers and the state.

The Song and the Facts

More Negroes Forced Into Peonage.

As for the Negroes, who greatly outnumber the whites in the rural sections, there are scarcely a handful of farm owners left. Overseers are now standing over the Negro share-croppers and tenant farmers with guns, driving them to work like convicts. These workers are finding it impossible to escape this slavery, and whenever the runaways are picked up in the cities they are promptly shipped back by felons. In Monroe County, some Negro farmers were sent government loan checks through the banks, amounting to several thousands of dollars. These checks were brazenly confiscated by the bankers and rich farmers of that territory, and the Negroes were terrorized into allowing themselves to be robbed of this money. Many of the Negro families, who have escaped this slavery, have stated openly that they will die before they will allow themselves to be sent back.

White Workers Forced to New Low Level.

One of the most noticeable effects of the crisis in this section is that the standard of living of a great majority of the whites has already reached a level as low as that of the Negroes. It is a common expression down here, that a white man can be hired cheaper that what it used to cost to hire a Negro. Whites are glad to get jobs now that used to be considered exclusively "nigger jobs."

This situation, which is of the greatest importance in the development of the revolutionary movement today and is speeding the unity of Negro and white workers, means that capitalism is no longer able to maintain the material basis for the ideology of white superiority among ever larger sections of the white working class. White workers, in these parts, are beginning to realize that the capitalist bunk about "Anglo- Saxon superiority," merely gives them the privilege (?) of starving separately from the Negroes.

Atlanta Cuts Off Relief.

The immediate need of working-class unity has lately been placed before the workers of Atlanta and the rest of the state in its sharpest form. The entire capitalist press of this section has been carrying on an intensive beat to the farm agitation. In spite of the fact that numerous workers, Negro and white, have been forced to leave their farms because of inability to live on them any longer, editorial after editorial has appeared in the press hauling the back to the farm movement.

The real purpose behind all this agitation was brazenly exposed at a meeting of the County Commission, together with a group of charity fakers. According to the local press, this meeting was called for the purpose of talking up an emergency situation that had arisen in Atlanta due to the recent closing of the relief stations which affected twenty-two thousand workers. These workers, who constitute about one-fourth of the totally unemployed in Atlanta, were receiving a miserable pittance through the Community Chest fund. When this relief closed down, it doomed these workers to quick starvation with the rest of the unemployed. In spite of the fact that only a few months ago the Community Chest fakers collected over eight hundred thousand dollars from the workers of this city, they now claim to be without funds and unable to continue the miserable relief they have been giving.

They came to the meeting of the County Commissioners with proposals to add to the already heavy tax burden of the poor workers and home owners in order to maintain their high-salaried jobs.

Mr. Frank Neely, executive director of the local Community Chest and a sixty-five hundred dollar a year faker, shed crocodile tears over the plight of all the starving workers and said that though he was hard-boiled, his heart bled for those poor families that came to his office for relief."

Urge Back to Ruined Farms Plan.

But it remained for Mr. Walter S. McNeal, Jr., a big banker and real estate man of Atlanta, to make the proposal that was hailed by the press and the County Commissioners as the most concrete proposal of the evening. He pointed out that there are hundreds of

DOCUMENT #29.

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[illegal] is now [illegal] and some [illegal] are in jail and we are [illegal] [illegal] [illegal]

[fol. 13-123] Document No. 29

Copy of the "Daily Worker," issue of July 8, 1932, being another issue of the same newspaper set forth in preceding document. This issue has the same title line, with the six planks of the Communist Party listed at the top of the first page, the same as quoted in Exhibit 28.

The following article appears on the 6th (editorial) page of this issue:

Document No. 30; being a circular letter as follows:

Workers of Atlanta

Employed and unemployed Negro and White

Attention!

Men and Women of Atlanta:

Thousands of us, together with our families, are at this minute facing starvation and misery and are about to be thrown out of our houses because the miserable charity handout that some of us were getting, has been stopped! Hundreds of thousands of dollars has been collected from the workers in this City for relief for the unemployed, and most of it has been squandered in high salaries for the heads of these relief agencies.

Mr. T. K. Glenn, president of the Community Chest is reported to be getting a salary of 10,000 dollars a year. Mr. Frank Neely, executive director of the Community Chest, told the County Commission Saturday that he gets 6,400 dollars a year while at the same time no worker, no matter how big his family, gets no more than two dollars and a half weekly to live on. If we count the salaries paid the secretaries and the investigators working in the 38 relief stations in this City, it should not surprise us that the money for relief was used up and there is no more left to keep us from starvation. If we allow ourselves to starve will these fakers grow fat off our misery, it will be our own fault!

The bosses want us to starve peacefully and by this method save the money they have accumulated off of our sweat and blood. We must force them to continue our relief and give more help. We must not allow them to stall

us any longer with fake promises. The City and County [fol. 13-124] authorities from the money they have already collected from us in taxes, and by taxing the incomes of the bankers and other rich capitalists, can take care of every unemployed family in Atlanta. We must make them do it.

At a meeting of the County Commissioners last Saturday, it was proposed by Walter S. McNeal, Jr., to have the police round up all unemployed workers and their families and ship them to the farms and make them work for just board and no wages, while just a few months ago these hypocrites were talking about forced labor in Soviet Russia, a country where there is no starvation and where the workers rule! Are we going to let them force us into slavery?

At this meeting Mr. Hendrix said that there were no starving families in Atlanta, that if there is he has not seen any. Let's all of us, white and negroes together, with our women folk and children go to his office in the county court house on Pryor and Hunter Sts. Thursday morning at 10 o'clock and show this faker that there is plenty of suffering in the city of Atlanta and demand that he gives us immediate relief! Organize and fight for unemployment insurance at the expense of the Government and the bosses! Demand immediate payment of the payment of the bonus to the ex-service men. Don't forget Thursday morning at the County Courthouse.

Issued by the Unemployed Committee of Atlanta.
P. O. Box 339.

Document No. 31, being a circular as follows:

Our Demonstration got us $6,000 from the County

Workers of Atlanta!

Employed and unemployed! Negro and White

The County Commissioners voted $6,000 to continue our relief, because Thursday, hundreds of us, Negro and White, went to the Court House, showed the bosses there was plenty of starvation in Atlanta, and demanded relief. We crammed that lie down the throat of Commissioner Hendricks who said there were no starving families—but this gentleman was not present Thursday morning. While we

have gained something by showing the bosses we will not starve peacefully, this is not enough! The County and City say they have no money. Where is the $600,000.00 that was [fol. 13-125] saved by cutting the salaries of the County officials? Why can't this money be given for relief? We can force these fakers to give us more relief if we organize and fight for it!

They are still talking about sending us to the farms to work for nothing the bosses will use any trick to keep us from getting the relief we are entitled to. Don't be fooled by this talk about good times on the farms: The farmers are starving and as ragged as we are!

Bosses Shocked by Unity of Negro and White

The biggest surprise handed the bosses who have been starving us out was when they saw Negro and White workers come down together to fight for relief. For many years they have handed us a lot of bunk about not having anything to do with the Negroes, and at the same time starving both of us. We white workers should not have allowed Commissioner Stewart and those other fakers to separate us from the negroes who came there with us. If we allow the bosses to divide us they will keep us both starving. We negro and white workers must stick together because that is the only way we can win. The bosses know this; that is why they work so hard to separate us. The privilege of starving separately don't mean anything to any sensible worker these days. The ex-servicemen in Washington know this, and Negro and White ex-servicemen are sticking together until they get their back pay—called the Bonus.

We Must Organize

Every day the bosses and landlords cut off our water and throw us out on the streets, both Negro and White. They don't care how many of us starve, white or black. We won't starve if we organize! The unemployed committee calls on the workers of every neighborhood to get together, organize your committees and see that no worker is evicted because he can't pay the rent. We must see that every relief station stays open and all of us and our kids are fed! There is no reason for any worker to starve in the midst of plenty! The unemployed Committee will call

a meeting in the near future of all workers, negro and white, to get together and make up our program of demands that we will organize and fight for.

Watch for our next circular!

[fol. 13-126] We refuse to starve.

For information, write to

C. Jones, Chairman, Box 339, Atlanta, Ga. Unemployed Committee of Atlanta.

[fol. 14] [File endorsement omitted.]

[fol. 15] IN SUPERIOR COURT OF FULTON COUNTY

No. 141

ANGELO HERNDON

vs.

J. I. LOWRY, Sheriff

Habeas Corpus

SPECIAL DEMURRER AND MOTION TO STRIKE—Filed November 12, 1935

Now comes the respondent, J. I. Lowry, Sheriff of Fulton County and files this his special demurrer, and says:

1. Respondent specially demurs to so much of par. 5 of the petition as says:

"• • • a full statement of which (evidence) is contained on pages 56 to 126, both inclusive, of the record on petitioner's appeal in the Supreme Court of the United States, a copy of which is marked exhibit "C," attached hereto, and made a part hereof."

And respondent demurs to the incorporation of said document above referred to as Exhibit "C" to said petition.

2. For ground of demurrer respondent says that said evidence and the reference thereto have no proper part in this case, as a review of the evidence in a trial cannot be obtained by habeas corpus proceeding taken after conviction.

Wherefore, Respondent moves to Strike from said petition the above quoted portion of par. 5 and the exhibit "C" attached thereto.

Respectfully submitted, J. W. LeCraw, John H. Hudson, John A. Boykin, Sol. Genl., Counsel for Respondent.

[File endorsement omitted.]

[fol. 16] Overruled—Dec. 7, 1935.

Hugh M. Dorsey, Judge S. C. A. C.

[fol. 17] In Superior Court of Fulton County

[Title omitted]

Answer of J. I. Lowry, Sheriff—Filed November 12, 1935

Now comes J. I. Lowry, Sheriff, respondent in above case, and files this answer to the petition for habeas corpus.

1. Respondent admits paragraphs two (2) and four (4).

2. Respondent admits the statement in par. 1 that petitioner is of the negro race, but can neither admit nor deny as to his citizenship.

3. Respondent denies paragraph three (3).

4. Respondent admits the first part of par. five (5)—as to the indictment and the correctness of the copy thereof attached to the petition—but for lack of information the respondent can neither admit nor deny the latter part of said paragraph relating to the evidence; and furthermore respondent contends that the evidence is immaterial and irrelevant to this proceeding.

5. Respondent can neither admit nor deny paragraph six (6), as same consists of mere conclusions as to the evidence.

6. Respondent denies that Section 56 of the Georgia Penal Code of 1910 is correctly quoted in paragraph seven (7). A correct copy of said penal law is as follows:

"Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful

authority of the State shall constitute an attempt to incite insurrection."

Respondent admits the correctness of the extracts from the opinion of the Supreme Court of Georgia. Respondent denies the last sentence of paragraph seven (7). Same consists, however, only of legal contentions.

7. Likewise, respondent denies paragraph eight (8), but says that same consists only of legal contentions, for decision by the Court.

[fol. 18] 8. Respondent denies paragraph nine (9), and says that there has been an adjudication of at least a part of the constitutional questions here raised in the overruling of the Motion to Quash the indictment in the case of the State vs. Angelo Herndon, being the same indictment and conviction referred to in this petition for habeas corpus. Said Motion to Quash was overruled by Judge L. B. Wyatt, Judge of the Superior Court, Coweta Circuit, sitting in Fulton Superior Court, on January 16, 1933. A copy of said Motion to Quash is attached hereto, marked Exhibit "A."

Respectfully submitted, J. W. LeCraw, John H. Hudson, John A. Boykin, Sol. Genl., Counsel for J. I. Lowry, Sheriff.

Duly sworn to by J. I. Lowry. Jurat omitted in printing.

[fol. 19] EXHIBIT "A" TO ANSWER

FULTON SUPERIOR COURT (CRIMINAL DIVISION)

No. 37812

STATE OF GEORGIA, U. S. A.

vs.

ANGELO HERNDON

MOTION TO QUASH INDICTMENT

Now comes the defendant in the above named case, and before being arraigned, before waiving arraignment, before

pleading guilty, before pleading in abatement, files his motion to quash this indictment, and shows:

1. That Negroes were wrongfully, unlawfully, systematically and intentionally excluded from the Grand Jury which indicted Angelo Herndon, in direct violation of the 14th Amendment of the Constitution of the United States, and of paragraph 3, article 1, of the Constitution of the State of Georgia.

2. That the Grand Jury was not legally convoked as required by the law of the State, and the law of the United States.

3. That the evidence submitted to the Grand Jury did not warrant a true bill of indictment being found against Angelo Herndon.

4. That the statute upon which said unlawful indictment is based is in direct violation of the Constitution of the State of Georgia, paragraph 15, article 1, and of the Constitution of the United States.

Therefore, the defendant prays that this indictment be quashed.

John H. Geer, Ben J. Davis, Jr., Attorneys for Defendant.

[File endorsement omitted.]

[fol. 20] In Superior Court of Fulton County

No. 141

Angelo Herndon

vs.

J. I. Lowry, Sheriff

Habeas Corpus

Judgment—Filed December 7, 1935

At the trial of the writ above stated, testimony and documents hereinafter referred to were tendered in evidence,

objections made to their admissibility, and decision thereon reserved.

1. Applicant presented testimony identifying records before the Supreme Court of the United States in the case of Herndon versus State of Georgia.

2. Applicant tendered portions of records to which reference is above made.

3. Respondent tendered a motion to quash Indictment No. 37812, on which Herndon was tried and convicted, as made in this Court at his trial by a Jury.

Held, objections overruled.

4. Applicant submits contentions that the law under which he was convicted is, as construed and applied in his case, unconstitutional, and that his detention thereunder is illegal, void and of no effect.

Held and adjudicated: That the applicant's contention that this law in question, as construed and applied in his case, is in conflict with the Fourteenth Amendment of the Constitution of the United States, in that it "is too vague and indefinite to provide a sufficiently ascertainable standard of guilt; and that it is also in conflict with Article 1, Section 1, Paragraph 3, of the Constitution of the State of Georgia for the same reason, and that his conviction and sentence are unconstitutional, illegal, void and of no effect, be and the same is hereby sustained.

Contentions of applicant other than that above stated, are not sustained.

Ordered, That the applicant be and he is hereby remanded to the custody of the respondent for twenty (20) days, such being the period allowed by law in which exceptions and appeal to the higher court may be taken by re-
[fol. 21] spondent to this order and judgment; and, if such exceptions and appeal shall be taken, then until the final disposition of the case by the higher courts. Provided, however, that at any time, applicant may be released from custody upon giving bail with good and sufficient surety, acceptable to the Sheriff of this county, in the sum of Eight Thousand ($8,000.00) Dollars, conditioned upon applicant appearing and abiding the ultimate judgment and sentence of the Court, if this order and judgment should be set aside.

And provided further, that if there shall be no exceptions

to this order and judgment, and no appeal taken to the higher court, applicant shall, at the expiration of the period aforesaid, be immediately released and discharged from respondent's custody, in so far as he is held and restrained of his liberty under the conviction and sentence referred to herein.

Dec. 7th, 1935.

Hugh M. Dorsey, Judge S. C. A. C.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 22] [File endorsement omitted]

[fol. 23] IN SUPERIOR COURT OF FULTON COUNTY

Bill of Exceptions—Filed December 11, 1935

Be it Remembered that on the 12th day of November, 1935, there came on to be heard in the superior court of said county, before the Hon. Hugh M. Dorsey, Judge of said court then and there presiding, the case of Angelo Herndon vs. J. I. Lowry, Sheriff of Fulton County, being a petition for the writ of habeas corpus wherein the said Angelo Herndon alleged that he was being unlawfully restrained of his liberty by the said respondent, and upon which petition the said Judge of said court had previously entered an order requiring the said respondent to produce the body of Angelo Herndon before him in said court on the said Nov. 12, 1935, to be disposed of as the law directs.

Be it Further Remembered that at the time and place so fixed the said respondent produced the said Angelo Herndon, and filed his answer to said writ of habeas corpus. Respondent also presented and filed his "Special Demurrer and Motion to Strike," in which he demurred specially to a certain portion of the petition for habeas corpus. After argument on said demurrer and motion to strike, the said Judge Dorsey reserved his decision thereon until a later date.

Be it Further Remembered that the case then proceeded to hearing before said Judge upon the petition for habeas

corpus and the answer of the respondent. The petitioner tendered in evidence the record of the brief of the evidence which had been adduced at the trial of the State of Georgia vs. Angelo Herndon in Fulton Superior Court, upon indictment No. 37,812, referred to in Par. 5 of the petition for habeas corpus in this case, and set forth in full as "Exhibit C" to the said petition for habeas corpus. Counsel for the respondent admitted the correctness of the said Exhibit as setting forth a brief of the evidence which had been adduced at the trial of the said case of the State of Georgia vs. Angelo Herndon in Fulton superior court upon indictment No. 37,812, but objected to the admission of said brief of evidence in the present hearing on the ground that a review of the evidence in a criminal trial cannot be obtained by a habeas corpus proceeding, and that the evidence which had been adduced at the trial of the indictment has no proper place or part in the hearing of a habeas [fol. 24] corpus such as the one on trial. Said Judge Hugh M. Dorsey reserved his decision on said objection, but subsequently overruled said objection as will be set out.

Be it Further Remembered that at said hearing the respondent introduced as a witness W. H. Spratlin, who being duly sworn, testified that he was a deputy clerk of Fulton superior court, in the criminal division thereof, and identified a paper presented to him as being a part of the records of said court, to wit: "Motion to Quash Indictment" filed by John H. Geer and Benj. Davis, Jr., as attorneys for Angelo Herndon in the case of the State of Georgia vs. Angelo Herndon, No. 37,812, filed Jan. 16, 1933, and hearing an order thereon by Judge L. B. Wyatt, Judge Superior Court, presiding in said case on Jan. 16, 1933, as follows: "This Motion to Quash, being traversed by the State, and evidence heard by the court without a jury by agreement of counsel waiving a jury herein, the Court hereby overrules the Motion to Quash." Counsel for respondent then tendered in evidence the said "Motion to Quash Indictment" in indictment No. 37,812, and the order upon the same, which was then and there admitted in evidence by the Court. The said document so admitted appears in the record of the present case as "Exhibit A" to the answer of the respondent, said Exhibit being a correct copy of the said "Motion to Quash Indictment."

Counsel for respondent conceded in open court that petitioner was held in custody by respondent under the sentence set forth as Exhibit A to the petition.

No Further Evidence was introduced at said hearing, but same proceeded to argument upon the legal questions presented by said petition for habeas corpus and the answer of respondent. At the conclusion of said hearing the said judge reserved his decision thereon until a subsequent date.

Be it Further Remembered that on December 7, 1935, the said Judge of said court rendered his decision upon the questions above presented, as follows:

[fol. 25] DECISION

(a) Respondent's Special Demurrer and Motion to Strike was overruled and denied.

(b) Respondent's objection to the admission in evidence in the present hearing of the brief of evidence adduced at trial of the indictment was Overruled, and said evidence was admitted.

(c) The law of the State of Georgia under which petitioner had been convicted, to wit: Section 56 of the Penal Code of 1910, as construed and applied in petitioner's case, was held unconstitutional in certain respects more particularly set out in said order.

(d) The conviction and sentence of said petitioner as set forth in his petition was held unconstitutional, illegal, void and of no effect.

(e) The said Angelo Herndon was ordered released by the respondent at the end of twenty days, in so far as said conviction and sentence was concerned, if the respondent did not appeal to the higher court.

(f) Said Angelo Herndon was allowed to make bond in the sum of $8,000, conditioned upon his appearing and abiding the ultimate judgment and sentence of the court, if the present order and judgment should be set aside.

Whereupon judgment and order to the above effect was entered by the said Judge of Fulton Superior Court.

ASSIGNMENTS OF ERROR

To so much of said order as is set forth in (a), (b), (c), (d) and (e), the said J. I. Lowry, sheriff as aforesaid, then and there excepted and here and now excepts, and assigns the same as error, and says that the Judge of said court erred in each of the respects herein designated and excepted to, and erred in not remanding the said Angelo Herndon to the custody of respondent for the purpose of serving the said sentence which had been imposed upon him in Fulton superior court, under indictment No. 37,812.

And now comes the said J. I. Lowry, sheriff of Fulton County, within the time allowed by law and within 20 days [fol. 26] from the date of the order and rulings and judgment complained of, and names himself as plaintiff in error in this bill of exceptions, and the said Angelo Herndon as defendant in error herein, and presents this bill of exceptions to the Hon. Hugh M. Dorsey, Judge of said court, as aforesaid, and prays that the same may be signed and certified in order that the errors complained of may be considered and corrected by the Supreme Court of Georgia.

DESIGNATION OF RECORD

Plaintiff in error specifies as material to the consideration of the questions herein presented the following portions of the record:

1. The petition of Angelo Herndon for the writ of habeas corpus, together with all entries thereon, and including Exhibits "A," "B," and "C" attached thereto and forming part thereof.

2. The writ of habeas corpus issued in said case, dated October 28, 1935.

3. The Special Demurrer and Motion to Strike, filed by the respondent, together with all entries and order thereon.

4. The answer filed by respondent, together with all entries thereon, and including Exhibit "A" attached thereto.

5. The Order and Judgment in said case, dated Dec. 7, 1935, signed by "Hugh M. Dorsey, Judge Superior Court Atlanta Circuit."

Plaintiff in error shows that the Supreme Court, and not the Court of Appeals, has jurisdiction of this writ of error

for the reason that the same seeks to review an order and judgment on a petition for habeas corpus, the same being an extraordinary remedy and falling within the jurisdiction of the Supreme Court under the Constitution of this State.

J. W. LeCraw, John H. Hudson, John A. Boykin, Sol. Genl., Attorneys for Plaintiff in Error. P. O. Address: Room 315, Courthouse, Atlanta, Ga.

[fol. 27] ORDER SETTLING BILL OF EXCEPTIONS

I do certify that the foregoing bill of exceptions is true and contains and specifies all of the evidence and specifies all of the record material to a clear understanding of the errors complained of, and the clerk of the superior court of Fulton County is hereby directed to certify the same as such and cause it to be transmitted to the current term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This 11th day of December, 1935.

Hugh M. Dorsey, Judge, Superior Court, Atlanta Circuit.

Due and legal service of the within bill of exceptions and the certificate thereon is hereby acknowledged.

This 11 day of December, 1935.

Whitney North Seymour, Sutherland, Tuttle & Brennan, Attorneys for Defendant in Error. P. O. Address: First Natl. Bank Bldg., Atlanta, Ga.

[File endorsement omitted.]

[fol. 28] Clerk's certificate to foregoing paper omitted in printing.

Filed in office December 14, 1935. K. C. Bleckley, C. S. C. Ga.

[fol. 29] IN SUPERIOR COURT OF FULTON COUNTY

Cross-Bill of Exceptions—Filed December 14, 1935

Be it Remembered that on the 12th day of November, 1935, there came on to be heard, in the superior court of

said county before the Honorable Hugh M. Dorsey, Judge of said court, then and there presiding, the case of Angelo Herndon v. J. I. Lowry, sheriff of Fulton County, being a petition for the writ of habeas corpus, wherein the said Angelo Herndon alleged that he was being unlawfully restrained of his liberty by the said respondent, and upon which petition the said Judge of said court had previously entered an order requiring the said respondent to produce the body of Angelo Herndon before him in said court on the said November 12, 1935, to be disposed of as the law directs.

Be it Further Remembered that at the time and place so fixed, the said respondent produced the said Angelo Herndon and filed his answer to said writ of habeas corpus.

Be it Further Remembered that the case then proceeded to hearing before the said Judge upon the petition for habeas corpus and the answer of the respondent. The petitioner tendered in evidence the record of the brief of the evidence which had been adduced at the trial of the case of the State of Georgia v. Angelo Herndon in Fulton Superior Court, upon Indictment No. 37,812, referred to in Paragraph 5 of the petition for habeas corpus in this case, and set forth in full as "Exhibit C" to the said petition for habeas corpus, and the said evidence was admitted by the Court. Counsel for respondent then conceded in open court that petitioner was held in custody by respondent under the sentence, set forth as "Exhibit A" to the petition. Respondent introduced in evidence the motion to Quash Indictment in Indictment No. 37,812, and the order upon same. The said document appears as "Exhibit A" to the answer of respondent in the present case.

No further evidence was introduced at said hearing, but the same proceeded to argument upon the legal questions [fol. 30] presented by the said petition for habeas corpus and the answer of the respondent. At the conclusion of said hearing, the said Judge reserved his decision thereon until a subsequent date.

Be it Further Remembered that on December 7, 1935, the said Judge of said court rendered his decision upon the question, and held and adjudged as follows:

DECISION

That the statute of the State of Georgia under which petitioner was indicted, as construed and applied in this

case, was in conflict with the Fourteenth Amendment of the Constitution of the United States, and with Article 1, Section 1, Paragraph 3, of the Constitution of the State of Georgia in that it is too vague and indefinite to provide a sufficiently ascertainable standard of guilt, and that petitioner's conviction and sentence were therefore unconstitutional, illegal, void and of no effect.

The Court by his order further stated that the contentions of applicant, other than that above stated, were not sustained.

ASSIGNMENTS OF ERROR

To the said last named order and judgment of the Court, to the effect that contentions of applicant, other than that sustained in the judgment of the trial court as above set out, were not sustained, the petitioner, Angelo Herndon, then and there excepted and here and now excepts and assigns the same as error, and says that the Judge of the said court erred in that he should have sustained the contentions of petitioner as follows:

(A) The said Court erred, as petitioner contends, in not sustaining petitioner's contention that Section 56 of the Georgia Penal Code was unconstitutional, illegal and void by reason of the fact that it is in conflict with the Fourteenth Amendment of the Constitution of the United States in the following particulars:

(1) It denies and unduly restricts freedom of speech, and of assembly.

(2) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

[fol. 31] (B) That the said Court erred, as petitioner contends, in not sustaining petitioner's contention that Section 56 of the Georgia Penal Code, as construed and applied to the petitioner by the Supreme Court of Georgia, was unconstitutional, illegal, and void by reason of the fact that as thus construed and applied it is in conflict with the Fourteenth Amendment of the Constitution of the United States in the following particular:

(1) It denies and unduly restricts petitioner's freedom of speech and of assembly.

(C) The said Court erred, as petitioner contends, in not sustaining petitioner's contention that Section 56 of the Georgia Penal Code, on its face, and as construed and applied to petitioner by the Supreme Court of Georgia, is in conflict with Article 1, Section 1, Paragraph 3, of the Constitution of the State of Georgia, which provides that "No person shall be deprived of life, liberty or property, except by due process of law," in that it denies and unduly restricts the right of petitioner and others to freedom of speech and assembly.

(D) The said Court erred, as petitioner contends, in not sustaining petitioner's contention that Section 56 of the Georgia Penal Code, on its face, and as construed and applied to petitioner by the Supreme Court of Georgia, was in conflict with Article 1, Section 1, Paragraph 15, of the Constitution of the State of Georgia, which provides that:

"No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that liberty."

(E) The said Court erred, as petitioner contends, in not sustaining petitioner's contention that Section 56 of the Georgia Penal Code, on its face, and as construed and applied to petitioner by the Supreme Court of Georgia, was in conflict with Article 1, Section 1, Paragraph 24, of the Constitution of the State of Georgia, which provides that:

[fol. 32] "The people have the right to assemble peaceably for their common good and to apply to those vested with the powers of government for redress of grievances by petition or remonstrance."

To all of which errors alleged by petitioner to have been committed by the said Judge, petitioner then and there excepted, and here and now excepts, and assigns the same as error, and says that the said Judge erred in not sustaining petitioner's contentions in each of the respects herein designated.

And Now Comes the said Angelo Herndon, petitioner, within the time allowed by law, and within twenty days from the date of the order and rulings and judgment complained of, and names himself as plaintiff in error in this

cross bill of exceptions, and the said J. I. Lowry, Sheriff of Fulton County, as defendant in error herein, and presents this cross bill of exceptions to the Honorable Hugh M. Dorsey, Judge of the said Court, as aforesaid, and prays that the same may be signed and certified in order that the errors complained of may be considered and corrected by the Supreme Court of Georgia.

DESIGNATION OF RECORD

Plaintiff in error specifies no additional portions of the record as necessary to the consideration of the questions herein presented, all of the material portions of the record having heretofore been specified by plaintiff in error in the bill of exceptions heretofore certified by J. I. Lowry, Sheriff of Fulton County, in which the said J. I. Lowry designated himself as plaintiff in error.

Plaintiff in error shows that the Supreme Court, and not the Court of Appeals, has jurisdiction of this cross bill of exceptions and writ of error for the reason that the same seeks to review an order and judgment on a petition for habeas corpus, the same being an extraordinary remedy and falling within the jurisdiction of the Supreme Court under the Constitution of this State, and for the further reason that the said petition seeks to draw in question the constitutionality of a statute of this State.

[fol. 33] Whitney North Seymour, Sutherland, Tuttle & Brennan, Attorneys for Plaintiff in Error.

ORDER SETTLING BILL OF EXCEPTIONS

I do certify that the foregoing cross bill of exceptions is true and contains and specifies all of the evidence, and specifies all of the record material to a clear understanding of the errors complained of, and the Clerk of the Superior Court of Fulton County is hereby directed to certify the same as such, and cause it to be transmitted to the current term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This 14th day of December, 1935.

Hugh M. Dorsey, Judge, Superior Court, Atlanta Circuit.

Due and legal service of the within cross bill of exceptions and the certificate thereon is hereby acknowledged.

This 14 day of December, 1935.

J. W. LeCraw, John H. Hudson, John A. Boykin, Sol. Genl., Attorneys for Defendant in Error.

[File endorsement omitted.]

[fol. 34] Clerk's certificate to foregoing paper omitted in printing.

Filed in office December 19, 1935. K. C. Bleckley, C. S. C. A.

[fol. 35] IN SUPREME COURT OF GEORGIA

Nos. 11216 and 11226

LOWRY, Sheriff,

v.

HERNDON et vice versa

OPINION—June 13, 1936

By the Court.

ATKINSON, Justice:

1. It is declared by statute: "Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection." Code of 1933, § 26-902. In Herndon v. State, 178 Ga. 832 (174 S. E. 597), as explained on motion for rehearing in Herndon v. State, 179 Ga. 597, 598, 600 (176 S. E. 620), the statute was construed: "It is immaterial whether the authority of the State was in danger of being subverted or that an insurrection actually occurred or was impending. • • • Force must have been contemplated, but the statute does not include either its occurrence or its imminence as an ingredient of the particular offense charged. Nor would it be necessary to guilt that the alleged offender should have intended that an insurrection should follow instantly or at any given time,

but as to this element it would be sufficient if he intended that it should happen at any time within which he might reasonably expect his influence to continue to be directly operative in causing such action by those whom he sought to induce."

(a) Neither as expressed, nor as it was construed by this court, is the above statute void, as violative of the fourteenth amendment of the Federal constitution (Code of 1933, § 1-815), for the alleged reasons (1) that it "denies and unduly restricts freedom of speech and of assembly;" (2) that "it is too vague and indefinite to provide a sufficiently ascertainable standard of guilt."

(b) Neither is the statute so construed and applied void as violative of the provisions of article 1, section 1, paragraph 3, of the constitution of the State of Georgia (§ 2-103) which provides: "No person shall be deprived of life, lib-[fol. 36] erty, or property, except by due process of law," for the same above alleged reasons.

(c) Neither is the statute so construed and applied void as violative of the provisions of article 1, section 1, paragraph 15, of the constitution of the State (§ 2-115). "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that liberty."

(d) Neither is the statute as so construed and applied void as violative of the provisions of article 1, section 1, paragraph 24, of the constitution of the State (§ 2-124): "The people have the right to assemble peaceably for their common good, and to apply to those vested with the powers of government for redress of grievances, by petition or remonstrance." The foregoing provisions of the constitutions do not guarantee freedom of speech or the right of assembly in the perpetration of a crime.

2. After conviction of attempting to incite insurrection under the foregoing statute, and affirmance of the final judgment on writ of error to this court, and detention by the sheriff, the court erred, in habeas-corpus proceedings based on alleged unconstitutionality of the statute, in holding the statute violative of the fourteenth amendment to the constitution of the United States (Code of 1933, §1-815), and

also of article 1, section 1, paragraph 3, of the constitution of the State (§2-103), in that, relatively to both provisions of the State and Federal constitutions, the statute "is too vague and indefinite to provide a sufficiently ascertainable standard of guilt."

3. The court did not err in refusing to hold the statute void as violative of the several provisions of the State and Federal constitutions on the several other grounds of attack urged against them, as specifically stated in the first division, to which the cross-bill of exceptions relates.

4. Under the pleadings and the evidence, which embraced the record on the trial that resulted in the conviction, the [fol. 37] court erred, in the habeas-corpus proceeding, in refusing to remand the prisoner to the custody of the officers.

Judgment reversed on the main bill of exceptions, and affirmed on the cross-bill. All the Justices concur, except Russell, C. J., not participating.

Beck, P. J., concurs in the judgment.

[fol. 38] IN SUPREME COURT OF GEORGIA

11216

J. I. LOWRY, Sheriff,

v.

ANGELO HERNDON

JUDGMENT—June 13, 1936

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed because the court erred in holding Penal Code § 56, as construed by this case, unconstitutional, and ordering the release of the petitioner Herndon.

All the Justices concur, except Russell, C. J., not participating.

Beck, P. J., concurs in the judgment.

[fols. 39-73] IN SUPREME COURT OF GEORGIA

11226

ANGELO HERNDON

v.

J. I. LOWRY, Sheriff

JUDGMENT—June 13, 1936

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

All the Justices concur, except Russell, C. J., not participating.

Beck, P. J., concurs in the judgment.

[fol. 74] SUPREME COURT OF THE UNITED STATES

No. 1

[Title omitted]

PETITION FOR APPEAL—Filed September 11, 1936

To the Honorable the Supreme Court of the United States:

Considering himself aggrieved by the final decision of the Supreme Court of the State of Georgia in the above-entitled cause, the appellant herein, Angelo Herndon, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond as security for costs thereon, and for an order approving said bond.

ASSIGNMENT OF ERRORS

And the said Angelo Herndon assigns the following errors in the record and proceedings in the said case:

1. The court below erred in holding that Section 56 of the Penal Code of Georgia is not void under the due process clause of the fourteenth amendment because it is too vague

and indefinite to provide a sufficiently ascertainable standard of guilt.

2. The Court below erred in holding that Section 56 of the Penal Code of Georgia, as construed and applied by the Supreme Court of Georgia in appellant's case, is not void as violative of appellant's rights under the due process clause of the fourteenth amendment because it is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

[fol. 75] 3. The Court below erred in holding that Section 56 of the Penal Code of Georgia, as expressed and as construed and applied to appellant, is not void under the fourteenth amendment because it is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

4. The Court below erred in holding that Section 56 of the Penal Code of Georgia, as construed and applied to appellant, is not so uncertain that its application to appellant violated its rights under the due process clause of the fourteenth amendment.

5. The Court below erred in holding that Section 56 of the Penal Code of Georgia, as construed and applied to appellant, did not deprive appellant of his liberty, without due process of law, in violation of the fourteenth amendment.

6. The Court below erred in holding that the Superior Court of Fulton County erred in habeas corpus proceedings based on alleged unconstitutionality of section 56 of the Penal Code of Georgia, in holding the statute as construed and applied to appellant violative of his rights under the fourteenth amendment.

7. The Court below erred in holding that under the pleadings and evidence, which embraced the record on the trial that resulted in appellant's conviction, the Superior Court of Fulton County erred in the habeas corpus proceeding in refusing to remand the appellant to the custody of the officers for the purpose of serving his sentence.

8. The Court below erred in holding that petitioner's conviction and sentence of violating section 56 of the Penal Code of Georgia was not unconstitutional, illegal, void and

of no effect under the due process clause of the fourteenth amendment.

9. The Court below erred in reversing the judgment of the superior court of Fulton County in habeas corpus proceedings directing the eventual discharge of appellant from custody.

10. The Court below erred in failing to direct the discharge of appellant from custody.

11. The Court below erred in directing that appellant be remanded to custody.

[fol. 76] PRAYER FOR REVERSAL

For which errors the appellant, Angelo Herndon, prays that the said judgment of the Supreme Court of the State of Georgia, dated June 13, 1936, reversing the judgment of the Superior Court of Fulton County, Georgia, be reversed and a judgment rendered in favor of the said appellant setting aside his conviction, releasing him from custody, and directing the cancellation and return of his bail, and for costs and for all other proper relief.

Dated, September 1, 1936.

Whitney North Seymour, Attorney for Petitioner and Appellant.

[File endorsement omitted.]

[fol. 77] SUPREME COURT OF THE UNITED STATES

No. 1

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 11, 1936

The appellant in the above-entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from a judgment made and rendered in the above-entitled cause by the Supreme Court of the State of Georgia, on June 13, 1936, reversing the judgment of the superior court of Fulton County, Georgia, rendered December 7, 1935, and from each and every part

of said judgment, and having presented and filed his petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It Is Now Hereby Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Georgia in the above-entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of Georgia shall prepare and certify a transcript of the record, proceedings, and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within forty days from this date;

And It Is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred Dollars.

Dated September 10th, 1936.

Richard B. Russell, Chief Justice of the Supreme Court of the State of Georgia.

[fol. 78] Supreme Court of Georgia. No. 11216. Lowry v. Herndon

It is further ordered that the mandate of this court be withheld and be not returned to the trial court until 10 days after the final decision on this appeal by the United States Supreme Court.

This, Sept. 10, 1936.

Richard B. Russell, Chief Justice Supreme Court of the State of Georgia.

[File endorsement omitted.]

[fol. 79] Citation, in usual form, showing service on J. I. Lowry, filed Sept. 11, 1936, omitted in printing.

[fols. 80-129] Bond on appeal for $500.00, approved and filed September 18, 1936, omitted in printing.

[fol. 130] SUPREME COURT OF THE UNITED STATES

No. 2

[Title omitted]

PETITION FOR APPEAL—Filed September 11, 1936

To the Honorable The Supreme Court of the United States:

Considering himself aggrieved by the final decision of the Supreme Court of the State of Georgia in the above-entitled cause, the appellant herein, Angelo Herndon, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond as security for costs thereon, and for an order approving said bond.

ASSIGNMENT OF ERRORS

And the said Angelo Herndon assigns the following errors in the record and proceedings in the said case:

1. The Court below erred in holding that section 56 of the Penal Code of Georgia is not void by reason of the fact that it is in conflict with the due process clause of the fourteenth amendment in the following particulars:

(a) It denies and unduly restricts freedom of speech and of assembly;

(b) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

2. The court below erred in holding that section 56 of the Penal Code of Georgia, as construed and applied to appellant, is not void by reason of the fact that as thus construed [fol. 131] and applied it is in conflict with the due process clause of the fourteenth amendment to the constitution of the United States in the following particulars:

(a) It denies and unduly restricts freedom of speech and of assembly.

3. The court below erred in holding that section 56 of the Penal Code of Georgia is not void by reason of the fact that it is in conflict with the fourteenth amendment in the following particulars:

(a) It denies and unduly restricts freedom of speech and of assembly;

(b) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

4. The Court below erred in holding that section 56 of the Penal Code of Georgia, as construed and applied to appellant, is not void by reason of the fact that as thus construed and applied it is in conflict with the fourteenth amendment to the constitution of the United States in the following particulars:

(a) It denies and unduly restricts freedom of speech and of assembly;

(b) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

5. The court below erred in holding that section 56 of the Penal Code of Georgia does not deny and unduly restrict appellant's freedom of speech and of assembly in violation of the due process clause of the fourteenth amendment.

6. The court below erred in holding that section 56 of the Penal Code of Georgia, as construed and applied to appellant, does not deny and unduly restrict appellant's freedom of speech and of assembly, in violation of the due process clause of the fourteenth amendment.

7. The court below erred in holding that the superior court of Fulton County did not err in refusing to hold section 56 of the Penal Code of Georgia void as violative of [fol. 132] the fourteenth amendment on the several grounds of attack which were the subject matters of the cross bill of exceptions.

8. The court below erred in failing to hold that the superior court of Fulton County erred in refusing to hold section 56 void as violative of the fourteenth amendment on the several grounds of attack which were the subject-matters of the cross bill of exceptions.

9. The court below erred in holding that under the pleadings and evidence, which embraced the record on the trial that resulted in appellant's conviction, the superior court of Fulton County erred in habeas corpus proceedings in

refusing to remand the appellant to the custody of the officers for the purpose of serving his sentence.

10. The court below erred in holding that petitioner's conviction and sentence of violating section 56 of the Penal Code of Georgia was not unconstitutional, illegal, void and of no effect under the due process clause of the fourteenth amendment.

11. The court below erred in affirming so much of the judgment of the superior court of Fulton County as failed to sustain appellant's attack upon section 56 of the Penal Code of Georgia, as construed and applied to him.

12. The court below erred in failing to reverse so much of the judgment of the superior court of Fulton County as failed to sustain attacks upon appellant's conviction under section 56 of the Penal Code of Georgia, as construed and applied to him.

13. The court below erred in failing to direct the discharge of appellant from custody.

14. The court below erred in directing that appellant be remanded to custody.

Prayer for Reversal

For which errors the appellant, Angelo Herndon, prays that the said judgment of the Supreme Court of the State of Georgia, dated June 13, 1936, affirming in part the judgment of the superior court of Fulton County, Georgia, be reversed and a judgment rendered in favor of the said appellant setting aside his conviction, releasing him from [fol. 133] custody, and directing the cancellation and return of his bail, and for costs and for all other proper relief.

Dated September 1, 1936.

Whitney North Seymour, Attorney for Petitioner and Appellant.

[File endorsement omitted.]

[fol. 134] SUPREME COURT OF THE UNITED STATES

No. 2

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 11, 1936

The appellant in the above-entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from a judgment made and rendered in the above-entitled cause by the Supreme Court of the State of Georgia, on June 13, 1936, affirming in part the judgment of the Superior Court of Fulton County, Georgia, rendered December 7, 1935 and from each and every part of said judgment, and having presented and filed his petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is Now Hereby Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Georgia in the above-entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of Georgia shall prepare and certify a transcript of the record, proceedings, and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty days from this date;

And it is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred Dollars.

Dated September 10th, 1936.

Richard B. Russell, Chief Justice of the Supreme Court of the State of Georgia.

Supreme Court of Georgia. No. 11226. Herndon v. Lowry

[fol. 135] It is further ordered that the mandate of this court be withheld and be not returned to the trial court until ten days after the final decision on this appeal by the United States Supreme Court.

This September 10, 1936.

Richard B. Russell, Chief Justice of the Supreme Court of the State of Georgia.

[File endorsement omitted.]

[fol. 136] Citation, in usual form, showing service on J. I. Lowry, filed September 11, 1936, omitted in printing.

[fols. 137-151] Bond on appeal for $500.00, approved and filed September 18, 1936, omitted in printing.

[fol. 152] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed September 17, 1936

To the Clerk of the Supreme Court of Georgia:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States pursuant to appeals duly allowed in the above-entitled causes, and to include in such transcript of record the following, to wit:

1. The petition for habeas corpus including exhibits.
2. Answer of respondent.
3. Special demurrer and motion to strike.
4. Exhibits offered at habeas corpus hearing.[1]
5. Opinion and judgment of the Superior Court of Fulton County granting the writ of habeas corpus.
6. Bill of exceptions filed on behalf of the sheriff of Fulton County.
7. Cross bill of exceptions filed on behalf of appellant.
8. Opinion and judgment of the Supreme Court of Georgia rendered June 13, 1936.

[fol. 153] 9. Appellant's statements of jurisdiction.

10. Appellant's petitions for appeal, assignments of errors and prayers for reversal.

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[1] The record of appellant's trial which was offered in evidence at the hearing need be included in the record only once and if included as Exhibit C to the petition for habeas corpus need not be duplicated, the record containing merely a reference to the fact that it appears as Exhibit C to the petition.

11. Orders allowing appeals dated September 10, 1936.
12. Copies of citations issued upon appeals.
13. Copy of bonds for costs.
14. Copy of appellant's statements directing attention to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.
15. Proof of service of the foregoing papers numbered 9, 10, 11, 12 and 14.
16. This præcipe and acknowledgment of service.

Said transcript to be prepared as required by law and by the Rules of the Supreme Court of Georgia and the Rules of the Supreme Court of the United States, and to be filed in the office of the clerk of the Supreme Court of the United States at Washington, D. C., on or before the return day of the citations.

Dated September 15, 1936.

Whitney North Seymour, Attorney for Appellant,
120 Broadway, New York, N. Y.

Service of the above præcipe accepted and acknowledged this 17th day of September, 1936.

John A. Boykin, Solicitor General of Fulton County, Ga.

[File endorsement omitted.]

[fol. 154] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 155] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed October 20, 1936

Comes now the appellant in the above entitled causes and adopts his assignments of errors as his statement of the points to be relied upon in this Court.

The appellant thinks the following portions of the record are necessary to a consideration of these points:

1. The petition for habeas corpus including exhibits.
2. Answer of respondent.

3. Special demurrer and motion to strike.
4. Exhibits offered at habeas corpus hearing.[1]
[fol. 156] 5. Opinion and judgment of the Superior Court of Fulton County granting the writ of habeas corpus.
6. Bill of exceptions filed on behalf of the Sheriff of Fulton County.
7. Cross bill of exceptions filed on behalf of appellant.
8. Opinion and judgment of the Supreme Court of Georgia rendered June 13, 1936.
9. Appellant's statements of jurisdiction.
10. Appellant's petitions for appeal, assignments of errors and prayers for reversal.
11. Orders allowing appeals dated September 10, 1936.
12. Copies of citations issued upon appeals.
13. Copy of bonds for costs.
14. Copy of appellant's statements directing attention to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.
15. Proof of service of the foregoing papers numberes 9, 10, 11, 12 and 14.
16. Appellant's præcipe and acknowledgment of service.

New York, N. Y., October 19, 1936.
Whitney North Seymour, Attorney for Appellant,
120 Broadway, New York, N. Y.

[fol. 157] State of New York,
County of New York, ss:

Joseph Romer being duly sworn, deposes and says:
I am over the age of twenty-one years and reside at 1900 51st Street in the Borough of Brooklyn, City and State of New York.
On October 19, 1936 I served a copy of appellant's "statement of the points on which he intends to rely and of the parts of the record which he thinks necessary for the consideration thereof" upon the appellee by mailing a copy

[1] The record of appellant's trial which was offered in evidence at the hearing need be included in the record only once and if included as Exhibit C to the petition for habeas corpus need not be duplicated, the record containing merely a reference to the fact that it appears as Exhibit C to the petition.

thereof by registered mail in a securely sealed and duly addressed envelope to the Solicitor General of Fulton [fol. 158] County, Georgia at Atlanta, Georgia. Said copy was mailed by depositing the same in a branch post office situated at 30 Church Street, New York, N. Y.

Joseph Romer.

Sworn to before me this 19th day of October, 1936. Joseph Giordano, Notary Public. Kings Co. Clk's No. 602 Reg. No. 7262. N. Y. Co. Clk's No. 627 Reg. No. 7G355. Commission expires March 30, 1937. (Seal of Joseph Giordano, Notary Public, Kings County, N. Y.)

[fol. 159] [File endorsement omitted.]

Endorsed on cover: File Nos. 41,014, 41,015. Georgia Supreme Court. Term No. 474. Angelo Herndon, appellant, vs. J. I. Lowry, Sheriff of Fulton County, Georgia. Term No. 475. Angelo Herndon, appellant, vs. J. I. Lowry, Sheriff of Fulton County, Georgia. Filed October 20, 1936. Term Nos. 474, O. T., 1936, 475, O. T., 1936.

(8478-C)